

# CRAVATH, SWAINE & MOORE

14396

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RECORDATION NO. 14396

AUG 9 1984 12 25 PM

INTERSTATE COMMERCE COMMISSION

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No.

AUG 9 1984

Date

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ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 14396

AUG 9 1984 12 25 PM

INTERSTATE COMMERCE COMMISSION

Soo Line Railroad Company  
Lease Financing Dated as of July 1, 1984  
Conditional Sale Indebtedness  
Due July 31, 1999

July 30, 1984

RECORDATION NO. 14396

AUG 9 1984 12 25 PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Bayne:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Soo Line Railroad Company, for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of July 1, 1984, between The Connecticut Bank and Trust Company, National Association, as Trustee, and General Motors Corporation (Electro-Motive Division), as Builder; and

(b) Agreement and Assignment dated as of July 1, 1984, between General Motors Corporation (Electro-Motive Division), as Builder, and Mercantile-Safe Deposit and Trust Company, as Agent.

2. (a) Lease of Railroad Equipment dated as of July 1, 1984, between Soo Line Railroad Company, as Lessee, and The Connecticut Bank and Trust Company, National Association, as Trustee; and

(b) Assignment of Lease and Agreement dated as of July 1, 1984, between The Connecticut Bank and Trust Company, National Association, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

*Enclosure*

A -

B -

C -

ICC OFFICE OF  
THE SECRETARY  
12 12 PM 1984

The names and addresses of the parties to the  
aforementioned agreements are as follows:

1. Agent:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, Maryland 21203

2. Trustee-Lessor:

The Connecticut Bank and  
Trust Company, National Association,  
One Constitution Plaza,  
Hartford, Connecticut 06115

3. Builder-Vendor:

General Motors Corporation  
(Electro-Motive Division)  
La Grange, Illinois 60525

4. Lessee:

Soo Line Railroad Company  
Fifth Street and Marquette Avenue  
Minneapolis, Minnesota 55440

Please file and record the documents referred to  
in this letter and index them under the names of the Agent,  
the Trustee-Lessor, the Builder-Vendor and the Lessee.

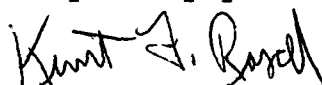
The equipment covered by the aforementioned  
documents consist of the following:

6 3,000 h.p. Model SD40-2 diesel electric  
locomotives bearing the Lessee's identification numbers  
S006618-6623, both inclusive, and also bears the legend  
"Ownership Subject to a Security Agreement Filed with The  
Interstate Commerce Commission".

There is also enclosed a check for \$20 payable to  
the Interstate Commerce Commission, representing the fee for  
recording the Conditional Sale Agreement and related Agree-  
ment and Assignment (together constituting one document),  
and the Lease of Railroad Equipment and related Assignment  
of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



Kurt F. Rosell  
as Agent for  
Soo Line Railroad Company

James H. Bayne, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/9/84

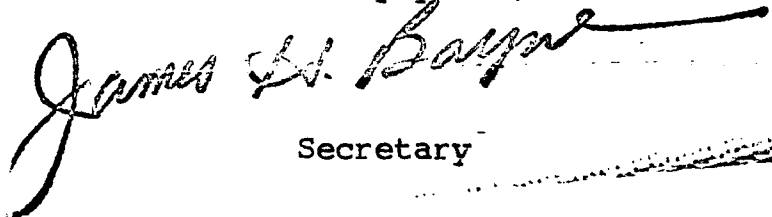
**OFFICE OF THE SECRETARY**

Kurt F. Rosell  
Cravath, Swaine & Moore }  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/9/84 at 12:25pm and assigned re-  
recording number(s). 14396, 14396-A, 14396-B & 14396-C

Sincerely yours,

  
Secretary

Enclosure(s)



14396

REGISTRATION NO. Filed 1425

[CS&M Ref. 5415-007]

AUG 9 1984 12 21 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1984

Between

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof

and

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

## CONDITIONAL SALE AGREEMENT

### Table of Contents\*

\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

	<u>Page</u>
PARTIES .....	C-1
PREAMBLES .....	C-1
ARTICLE 1. ASSIGNMENT; DEFINITIONS .....	C-1
1.1. Contemplated Sources of Purchase Price; CSA Assignment .....	C-1
1.2. Lease Assignment .....	C-2
1.3. Meaning of "Builder" and "Vendor" .....	C-2
ARTICLE 2. CONSTRUCTION AND SALE .....	C-2
ARTICLE 3. INSPECTION AND DELIVERY .....	C-3
3.1. Place of Delivery .....	C-3
3.2. Force Majeure .....	C-4
3.3. Exclusion of Equipment .....	C-4
3.4. Inspection .....	C-5
3.5. Builder Responsibilities After Delivery .....	C-5
ARTICLE 4. PURCHASE PRICE AND PAYMENT .....	C-5
4.1. Meaning of "Purchase Price"; Exclusion of Units .....	C-5
4.2. Settlement and Closing Dates .....	C-6
4.3. Indebtedness of Trustee to Vendor .....	C-6
4.4. CSA Indebtedness; Payment Dates; Interest .....	C-7
4.5. Calculation of Interest .....	C-7
4.6. Overdue Rate .....	C-7
4.7. Currency of Payment; Limitation on Prepayment .....	C-7

	<u>Page</u>
4.8. Liability of Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments .....	C-8
ARTICLE 5. SECURITY INTEREST IN THE EQUIPMENT .....	C-10
5.1. Vendor To Retain Security Interest; Accessories Are Part of Equipment .....	C-10
5.2. Obligations upon Payment of CSA Indebtedness .....	C-11
ARTICLE 6. TAXES .....	C-12
6.1. Indemnification of Nonincome Taxes .....	C-12
6.2. Claims; Contests; Refunds .....	C-13
6.3. Reports or Returns .....	C-14
ARTICLE 7. MAINTENANCE; CASUALTY OCCURRENCES .....	C-14
7.1. Maintenance .....	C-14
7.2. Casualty Occurrences .....	C-14
7.3. Obligations upon Payment of Casualty Value .....	C-15
7.4. Casualty Value .....	C-15
ARTICLE 8. INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS .....	C-16
ARTICLE 9. REPORTS AND INSPECTIONS .....	C-16
ARTICLE 10. MARKING OF EQUIPMENT .....	C-16
10.1. Marking of Equipment .....	C-16
10.2. No Designations of Ownership .....	C-17
ARTICLE 11. COMPLIANCE WITH LAWS AND RULES .....	C-17
11.1. Compliance with Laws and Rules .....	C-17
ARTICLE 12. POSSESSION AND USE .....	C-18
12.1. Possession and Use of Equipment by Trustee .....	C-18

	<u>Page</u>
12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination .....	C-18
12.3. Other Leases of Equipment .....	C-18
ARTICLE 13. PROHIBITION AGAINST LIENS .....	C-18
13.1. Trustee To Discharge Liens .....	C-18
13.2. No Breach for Certain Liens .....	C-19
13.3. Article 13 Subject to Article 23 Except in Certain Instances .....	C-19
ARTICLE 14. INDEMNITIES AND WARRANTIES .....	C-20
14.1. Indemnification .....	C-20
14.2. Survival; No Subrogation .....	C-21
14.3. Trustee Not Released if Equipment Damaged or Lost .....	C-21
14.4. Builder Warranties; Patent Indemnities; Subject to Article 23 .....	C-21
ARTICLE 15. ASSIGNMENTS .....	C-22
15.1. Assignment by Trustee .....	C-22
15.2. Assignment by Vendor .....	C-22
15.3. Notice of Assignment by Vendor .....	C-22
15.4. No Setoff Against CSA Indebtedness upon Assignment .....	C-23
ARTICLE 16. DEFAULTS .....	C-23
16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness .....	C-23
16.2. Waiver of Defaults .....	C-26
ARTICLE 17. REMEDIES .....	C-26
17.1. Vendor May Take Possession of Equipment .....	C-26
17.2. Assembling of Equipment for Vendor .....	C-27
17.3. Vendor May Dispose of or Retain Equipment .....	C-28
17.4. Vendor May Sell Equipment; Trustee's Right of Redemption .....	C-28
17.5. Sale of Equipment by Vendor .....	C-29
17.6. Effect of Remedies and Powers and Exercise Thereof .....	C-30

	<u>Page</u>
17.7. Deficiencies .....	C-30
17.8. Expenses .....	C-30
17.9. Remedies Subject to Mandatory Legal Requirements .....	C-31
ARTICLE 18. APPLICABLE STATE LAWS .....	C-31
18.1. Conflict with State Laws .....	C-31
18.2. Waiver of Notices .....	C-31
ARTICLE 19. RECORDING .....	C-31
ARTICLE 20. REPRESENTATIONS AND WARRANTIES OF BUILDER .....	C-32
ARTICLE 21. ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT .....	C-32
21.1. Article and Paragraph Headings for Convenience Only .....	C-32
21.2. Effect and Modification of Agreement .....	C-32
ARTICLE 22. NOTICE .....	C-33
ARTICLE 23. IMMUNITIES; SATISFACTION OF UNDER- TAKINGS .....	C-33
23.1. No Recourse Against Certain Persons .....	C-33
23.2. Satisfaction of Certain Covenants .....	C-34
23.3. No Personal Liability of Trustee .....	C-34
ARTICLE 24. LAW GOVERNING .....	C-35
ARTICLE 25. EXECUTION .....	C-36
TESTIMONIUM .....	C-36
SIGNATURES .....	C-36
ACKNOWLEDGMENTS .....	C-37
Schedule I .....	C-38
Annex A--Miscellaneous .....	C-39
Annex B--Equipment Table .....	C-41
Annex C--Lease .....	
Annex D--Assignment of Lease and Agreement .....	

CONDITIONAL SALE AGREEMENT dated as of July 1, 1984, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation ("Builder" or "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof) and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as Trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with Dyer Associates, a Rhode Island Limited Partnership (the "Owner") in which Connell Finance Company, Inc. and Textron Financial Corporation are, respectively, the Limited Partner and the General Partner (the "Partners" or individually a "Partner").

WHEREAS the Builder has agreed to construct, sell and deliver to the Trustee, and the Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment");

WHEREAS the Trustee is entering into a lease with SOO LINE RAILROAD COMPANY, a Minnesota corporation ("Lessee"), substantially in the form annexed hereto as Annex C ("Lease"); and

WHEREAS MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY ("Assignee") is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement"), among the Lessee, the Assignee, the Trustee, the Owner, the Partners and the investors named in Appendix I thereto ("Investors").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

#### ARTICLE 1

##### ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; CSA Assignment. The parties hereto contemplate that the Trustee

will furnish 37.652% of the Purchase Price (as defined in paragraph 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between the Builder and the Assignee.

1.2. Lease Assignment. The Trustee will assign to the Vendor, as security for the payment and performance of all the Trustee's obligations hereunder, all right, title and interest of the Trustee with certain exceptions in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the units of Equipment to be constructed by such party and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

## ARTICLE 2

### CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto and will sell and deliver the Equipment to the Trustee, and the Trustee will purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called "Specifications"). The Builder represents and warrants that (i) the design, quality and component parts of

each unit of the Equipment to be delivered under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and (ii) each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not be more than 20% of the cost of material and parts used in constructing such unit and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Trustee.

### ARTICLE 3

#### INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of the Equipment to the Trustee at the place or places specified in Annex B hereto or such other place or places designated from time to time by the Trustee, freight charges and storage charges, if any, prepaid for the account of the Trustee, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of paragraph 16.1 hereof or the occurrence of any event of default (as described in paragraph 16.1 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, unless it has been assured to its satisfaction that it will receive the full Purchase Price (as defined in paragraph 4.1 hereof) thereof. The Builder agrees not to deliver any unit of its Equipment hereunder (a) until it receives notice from the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and from the Trustee that the conditions contained in Paragraph 8 of the Participation Agreement have been met, (b) following receipt of written notice from the Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, until such time as such written notice may be canceled by a further written notice, or (c) following receipt of written notice from the Assignee or the Trustee



of its determination that there has been a material adverse change in the business or financial condition of the Lessee from that shown in its audited consolidated balance sheet as of December 31, 1983.

3.2. Force Majeure. The Builder's obligation as to time of delivery is subject to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Any Equipment not delivered pursuant to paragraph 3.1 hereof and any Equipment not delivered and accepted hereunder on or before September 30, 1984 (whether because of delays of the nature described in paragraph 3.2 hereof or otherwise), shall be excluded from this Agreement, and the Trustee shall be relieved of its obligations to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this paragraph 3.3 or pursuant to paragraph 4.1 hereof, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with the Builder relating to the Equipment ("Purchase Order") unless arrangements satisfactory to the Builder have otherwise been made for financing such units, and the Trustee will reassign, transfer and set over to or upon the order of the Lessee all the right, title and interest of the Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto. The delivery to and acceptance by or on behalf of the Trustee of any unit of Equipment so excluded shall be ineffective, ab initio, to create in or transfer to the Trustee any legal or beneficial right or interest in such unit or (except as provided in paragraph 4.1 hereof) to impose on the Trustee any liability, obligation or responsibility with respect thereto.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees or agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder will inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Trustee (who may be an employee or agent of the Lessee) shall execute and deliver to the Builder of such units of Equipment a certificate of acceptance ("Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Trustee and are marked in accordance with paragraph 10.1 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 hereof. By Section 2 of the Lease, the Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to Section 2 of the Lease shall be deemed to be acceptance of such unit by the Trustee.

3.5. Builder Responsibilities After Delivery. On delivery by the Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 hereof.

#### ARTICLE 4

##### PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as

so increased or decreased. If on any Closing Date (as hereinafter defined in paragraph 4.2) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder (and any assignee of the Builder) and the Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price, and the Trustee shall have no further obligation or liability in respect of units so excluded. Any units so excluded shall be excluded in the reverse order of their acceptance hereunder.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The term "Closing Date" with respect to any Group shall be August 10, 1984. The closing on each Closing Date shall take place at the offices of Cravath, Swaine & Moore in New York, New York. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut, Minneapolis, Minnesota, or Baltimore, Maryland, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 37.652% of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in 15 installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable

in installments under this subparagraph (b) being hereinafter called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.

(1) The installments of the CSA Indebtedness shall be payable on January 1 each year from 1986 to 1991, inclusive, and on July 1 each year from 1991 to 1999, inclusive, each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness shall bear interest at 12.494% per annum until October 1, 1984, and thereafter at a rate of 14.5% per annum ("Debt Rate"). Interest on the unpaid balance of the CSA Indebtedness shall be payable on January 1 and July 1 each year, commencing January 1, 1985, to and including July 1, 1999 (each such date being hereinafter called an "Interest Payment Date"). The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Assignee will furnish to the Vendor and the Lessee promptly after the last Closing Date an accurate and complete schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date and on each Interest Payment Date.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next business day, and no interest shall be payable thereon from and after the scheduled date for payment thereof to such next business day.

4.5. Calculation of Interest. Interest payable under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. Overdue Rate. The Trustee will pay interest at the Debt Rate plus 1% per annum ("Overdue Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment; Limitation on Prepayment. All payments provided for in this Agreement shall be

made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due, except as provided in Article 7 hereof, paragraph 16.1 hereof, Paragraph 20 of the Participation Agreement or the next sentence. If an Event of Default under Clause A of § 13.1 of the Lease has occurred and is continuing and has continued for over one calendar year, the Trustee may, at its option, upon 30 days' prior written notice to the Vendor prepay the entire CSA Indebtedness, without premium or penalty, by payment of the entire unpaid principal amount thereof, together with accrued interest thereon to the date of prepayment, unless payment of the amount in default under said Clause A is made by the Lessee within such 30-day period; it being understood and agreed, however, that such right of payment by the Lessee shall not affect the rights and remedies of the Vendor under Articles 16 and 17 hereof.

4.8. Liability of Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this paragraph 4.8), but not limiting the effect of Article 23 hereof, the liability of the Trustee or any assignee of the Trustee for all payments to be made by it under and pursuant to this Agreement (with the exception only of the payments to be made pursuant to paragraph 4.3(a) hereof, and the amounts payable pursuant to the proviso to paragraph 13.3 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be required to be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of the Trustee. In addition, the Vendor agrees that the Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto), insofar as it relates to

the Lessee or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in paragraph 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except the Excluded Indemnity defined in Section 1 of the Lease Assignment) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including any amounts of Excluded Indemnity or any amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under § 13.1(A) of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

## ARTICLE 5

### SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessories Are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment

(i) which are not readily removable without causing material damage to such unit or (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor or the Trustee. However, the Vendor, if so requested by the Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment and (c) pay to the Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Trustee.



## ARTICLE 6

### TAXES

6.1. Indemnification of Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Trustee agrees to pay, and to indemnify and hold the Vendor and each Investor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Trustee, the Owner, the Partners, the Vendor, the Lessee, the Trust Estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the CSA Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or any state or political subdivision thereof imposed on or measured solely by the net income or excess profits of any indemnified person, the Trust Estate, the Trustee, the Owner or a Partner, or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of any indemnified person, the Trust Estate, the Trustee, the Owner or a Partner, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by an Investor or the Vendor; (iii) Taxes which are imposed on or measured solely by the net income of any indemnified person, the Trust Estate, the Trustee, the Owner or a Partner if and to the extent that such Taxes are in substitution for or reduce the Taxes

payable by any other person which the Trustee has not agreed to pay or indemnify against pursuant to this Article 6 and (iv) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Trustee, or any transfer or disposition by the Trustee resulting from bankruptcy or other proceedings for the relief of debtors in which the Trustee is the debtor, or any interest in any Unit or interest in rentals under the Lease; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in paragraph 6.2 hereof; and provided further that no indemnity shall be required with respect to taxes paid to any foreign country or subdivision thereof if and to the extent that (i) any person upon whom such taxes are imposed or any person indemnified hereunder is entitled to claim and can utilize a credit with respect to such foreign taxes against its Federal income tax liability and (ii) the use of such credit does not in any way or in any year impair or diminish the ability of such person to claim or utilize any foreign tax credits that would otherwise be available to it; and provided further that if in any year the Trustee pays an indemnity to any such person hereunder with respect to foreign taxes paid and such person is subsequently able to claim and utilize such foreign taxes paid as a credit against its Federal income taxes (but only if such credit may be claimed and utilized in addition to all other foreign tax credits which such person would otherwise be entitled to claim) then such person shall repay to the Trustee an amount determined in the manner provided in Section 7 of the Indemnity Agreement of even date herewith; and provided further that, in all cases where any payment is to be made hereunder, appropriate adjustments shall be made to reflect and give credit for any tax savings realized by an indemnified person as a result of any payment of any amount giving rise to the payment hereunder or any Taxes paid as a result of the payment hereunder.

6.2. Claims; Contests; Refunds. If claim is made against an indemnified person for any Taxes indemnified against under this Article 6, an indemnified person shall promptly notify the Trustee. If reasonably requested by the Trustee in writing, such indemnified person shall, upon receipt of any indemnity reasonably satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and

proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of an indemnified person; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of an indemnified person in any such proceeding or action) without the prior written consent of an indemnified person, which consent shall not be unreasonably withheld. If an indemnified person shall obtain a refund of all or any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or otherwise or an amount representing interest thereon, the indemnified person shall pay the Trustee the amount of such refund or interest net of expenses together with any tax benefits derived from any payment pursuant to this sentence; provided, however, that no event of default set forth in paragraph 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Trustee under or arising out of this Article 6, the Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Trustee.

## ARTICLE 7

### MAINTENANCE; CASUALTY OCCURRENCES

7.1. Maintenance. Subject to the limitations contained in Article 23 hereof, the Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Trustee shall, promptly after it shall have received notice from the Lessee or

otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Casualty Payment Date (as defined in § 7.1 of the Lease), the Trustee shall, subject to the limitations contained in paragraph 4.8 hereof, pay to the Vendor a sum equal to the Casualty Value (as defined in paragraph 7.4 hereof) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 hereof.

7.3. Obligations upon Payment of Casualty Value.

Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor or the Trustee, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

7.4. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original

Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

## ARTICLE 8

### INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Trustee shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9

### REPORTS AND INSPECTIONS

On or before April 1 in each year, commencing with the year 1985, the Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10

### MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The

Trustee will not permit the road number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in paragraph 10.1 hereof, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## ARTICLE 11

### COMPLIANCE WITH LAWS AND RULES

11.1. Compliance with Laws and Rules. During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12

### POSSESSION AND USE

12.1. Possession and Use of Equipment by Trustee. The Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall, except as provided in § 15.2 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. Other Leases of Equipment. Subject to the rights of the Lessee under the Lease, the Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

## ARTICLE 13

### PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof and will

promptly discharge any such lien, charge or security interest which arises; but the Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent or being contested in good faith by appropriate proceedings, promptly commenced and diligently prosecuted.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. All obligations of the Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Trustee, and to the extent that it receives funds sufficient for such purpose from the Owner as required by the Trust Agreement, from, through or under the Owner, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including all income taxes arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment), which, if not paid or discharged, could become a lien, charge or security interest on the Equipment or any unit thereof or the Vendor's interest in the Lease and the payments to be made thereunder; but the Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in or to the Lease and the payments to be made thereunder.



## ARTICLE 14

### INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay, and shall protect, indemnify and hold the Vendor, each Investor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever (other than Taxes which are provided for in Article 6 hereof whether or not indemnified thereunder) which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of any Indemnified Matter (as defined in § 12.1 of the Lease); except that the Trustee shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from any tort (including strict liability or products liability in contract or tort), breach of warranty or failure to perform any covenant hereunder of the Builder or is covered by the Builder's patent indemnification referred to in paragraph 14.4 hereof. The Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Trustee may and, upon such Indemnified Person's request, will at the Trustee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person; and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt

thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Trustee, and provided that no event of default set forth in paragraph 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Trustee) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Trustee to the extent necessary to reimburse the Trustee for indemnification payments previously made in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Trustee Not Released if Equipment Damaged or Lost. The Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. Builder Warranties; Patent Indemnities; Subject to Article 23. The agreement of the parties relating to the Builder warranties of material and

workmanship and the limitations of liability and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. Such warranties and patent indemnification shall be for the benefit of the Trustee and the Lessee and their respective successors and assigns.

## ARTICLE 15

### ASSIGNMENTS

15.1. Assignment by Trustee. Except as provided in Article VII of the Trust Agreement, the Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. Assignment by Vendor. Any and all of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof or relieve the Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment, either the assignor or the assignee shall give written notice to the Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee; and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness upon Assignment. The Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Trustee arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against the Builder.

## ARTICLE 16

### DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Trustee shall fail to pay or cause to be paid in full the principal of and interest on the CSA Indebtedness or any Casualty Value payment when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 15 days after the Assignee has sent Notice of such default to the Owner and each Partner; or

(b) the Trustee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4

or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under any provision of Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereinafter be amended; or

(d) any other proceeding shall be commenced by or against the Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Trustee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Trustee under this Agreement or the Lessee under the Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee or the Lessee, as the case may be, or for their respective property in connection with any such

proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) any Event of Default under clause A of § 13.1 of the Lease shall have occurred and be continuing unless the Trustee shall have cured the corresponding event of default hereunder within five days of written notice of such event of default;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate to the extent legally enforceable. In addition, if the Trustee does not pay the entire unpaid CSA Indebtedness, together with interest thereon accrued and unpaid to the date of payment, within 30 days of such notice of Declaration of Default, the Vendor may, upon written notice to the Vendee and the Lessee, subject to the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Trustee acknowledges the right of the Vendor to terminate the term of the Lease) and the Vendor may exercise the other remedies provided in Article 17 hereof; provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Vendor (under the Lease Assignment), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Vendor (under the Lease Assignment), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property

of the Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Trustee shall promptly notify the Vendor of any event of which it has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. In the case of the Trustee, knowledge shall mean actual knowledge of an officer or employee in its Corporate Trust Department.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is agreed by the Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17

### REMEDIES

17.1. Vendor May Take Possession of Equipment. Subject to the provisions of paragraph 16.1 hereof and the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other

facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) transport the same to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, the Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.



17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, upon such notice and consent as hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and the Trustee consents thereto in writing, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided further, that if the Trustee does not consent to the retention of the Equipment or if the Lessee or any other person notified under the terms of this paragraph objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. Subject to the provisions of paragraph 16.1 hereof and the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one

or more of the units thereof, free from any and all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Trustee and the Lessee shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall

not be accountable to the Trustee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall, subject to the limitations of paragraph 4.8 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of paragraph 4.8 and Article 23 hereof, be entitled to recover a judgment therefor against the Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee.

17.8. Expenses. The Trustee will pay all reasonable expenses, including attorney's fees, incurred by the Vendor in enforcing its remedies under the terms of this

Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorney's fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations set forth in paragraph 4.8 and Article 23 hereof.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18

### APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

## ARTICLE 19

### RECORDING

Subject to the provisions of Article 23 hereof, the Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant

to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to The Railway Act of Canada; and the Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

## ARTICLE 20

### REPRESENTATIONS AND WARRANTIES OF BUILDER

The Builder hereby represents and warrants to the Trustee, its successors and assigns, that this Agreement is duly authorized, executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

## ARTICLE 21

### ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Paragraph Headings for Convenience Only. All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing

and signed by duly authorized representatives of the Vendor and the Trustee.

## ARTICLE 22

### NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, as its chief place of business at the following specified addresses:

(a) to the Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with a copy each to each Owner at its address set forth in Appendix II to the Participation Agreement;

(b) to the Builder, at the address specified in Item 1 of Annex A hereto; and

(c) to any assignee of the Vendor, or the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties.

## ARTICLE 23

### IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owners whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Trustee under paragraphs 7.1, 17.2, 17.7 and 17.8 hereof and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof) by the Lessee's execution and delivery of the Lease. The Trustee shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for a default. Until the security interest of the Vendor is discharged as provided in Article 5 of this Agreement, no waiver or amendment of the Lessee's undertaking under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Trustee increasing or decreasing the rentals or casualty values payable pursuant to §§ 3 and 7 of the Lease to the extent permitted by the Indemnity Agreement or § 3.1 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor, together with a certificate of the Trustee certifying to the Vendor that such increase or decrease is in accordance with the provisions of the Indemnity Agreement or § 3.1 of the Lease and the adjusted amounts set forth in such agreement have not been reduced below those necessary to satisfy the obligations of the Trustee hereunder.

23.3. No Personal Liability of Trustee. Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Trustee are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed hereunder by or shall at any time be asserted or enforceable against said financial institution on account of any representation, warranty or agreement hereunder of the Trustee (except for the obligations of the Trustee to comply with the provisions of the

proviso of Article 13.3 hereof); either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this paragraph 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that, except as aforesaid, the Trustee in its fiduciary or individual capacity shall not have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Trustee or the Owner) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 24

#### LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and Section 86 of The Railway Act of Canada such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof as shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

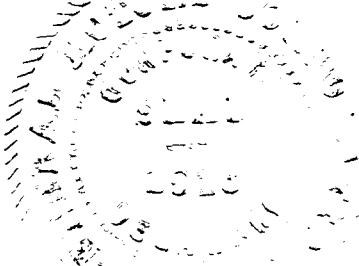


ARTICLE 25

EXECUTION

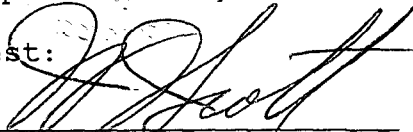
This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.



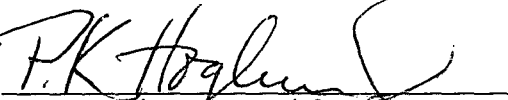
[Corporate Seal]

Attest:

  
Assistant Secretary

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

  
Vice President

THE CONNECTICUT BANK AND  
TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee  
as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this <sup>AUGUST</sup> 3RD day of ~~July~~ 1984, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Juanita Acantelo  
Notary Public

(Notarial Seal)

My Commission expires April 17, 1988



STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this       day of July 1984, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the Corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

My Commission expires

SCHEDULE I

14.50% Interest Rate  
Allocation Schedule of Each \$1,000,000  
of CSA Indebtedness Payable

<u>Date Due</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
7/1/84	000.00	000.00	000.00	1,000,000.00
1/1/85	57,420.39	57,420.39	000.00	1,000,000.00
7/1/85	72,500.02	72,500.00	0.02	999,999.98
1/1/86	100,171.44	72,500.00	27,671.44	972,328.54
7/1/86	70,493.84	70,493.82	0.02	972,328.52
1/1/87	102,177.62	70,493.82	31,683.80	940,644.72
7/1/87	68,196.76	68,196.74	0.02	940,644.70
1/1/88	104,474.69	68,196.74	36,277.95	904,366.75
7/1/88	65,566.61	65,566.59	0.02	904,366.73
1/1/89	107,104.84	65,566.59	41,538.25	862,828.48
7/1/89	62,555.08	62,555.06	0.02	862,828.46
1/1/90	100,406.87	62,555.06	37,851.81	824,976.65
7/1/90	59,810.83	59,810.81	0.02	824,976.63
1/1/91	88,988.69	59,810.81	29,177.88	795,798.75
7/1/91	90,435.84	57,695.41	32,740.43	763,058.32
1/1/92	55,321.75	55,321.73	0.02	763,058.30
7/1/92	102,197.09	55,321.73	46,875.36	716,182.94
1/1/93	51,923.28	51,923.26	0.02	716,182.92
7/1/93	113,260.97	51,923.26	61,337.71	654,845.21
1/1/94	47,476.30	47,476.28	0.02	654,845.19
7/1/94	112,846.70	47,476.28	65,370.42	589,474.77
1/1/95	42,736.94	42,736.92	0.02	589,474.75
7/1/95	113,379.29	42,736.92	70,642.37	518,832.38
1/1/96	37,615.37	37,615.35	0.02	518,832.36
7/1/96	113,958.14	37,615.35	76,342.79	442,489.57
1/1/97	32,080.51	32,080.49	0.02	442,489.55
7/1/97	114,583.69	32,080.49	82,503.20	359,986.35
1/1/98	26,099.03	26,099.01	0.02	359,986.33
7/1/98	193,193.73	26,099.01	167,094.72	192,891.61
1/1/99	13,984.66	13,984.64	0.02	192,891.59
7/1/99	206,876.17	13,984.64	192,891.53	0.06
1/1/00	0.06	0.00	0.06	(-.00)
	<u>2,527,837.20</u>	<u>1,527,837.20</u>	<u>1,000,000.00</u>	<u>(-.00)</u>

ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

Item 1. General Motors Corporation (ElectroMotive Division), a Delaware corporation, having an address at La Grange, Illinois 60525 ("EMD").

Item 2. The Equipment shall be settled for in one Group. Unless the parties otherwise agree the Group shall be settled for within 10 business days of the First Delivery Date.

Item 3. EMD warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (this "Agreement") and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. EMD agrees to correct such defects, which examination shall disclose to EMD's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of EMD's obligation with respect to such defect under this warranty.

EMD warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to EMD.

EMD further agrees that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification of any rights under this Item 3.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP EXPRESSED OR IMPLIED, MADE BY THE BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 4. EMD shall defend any suit or proceeding brought against the Trustee, the Lessee and/or each assignee of EMD's rights under this Agreement so far as the same is based on a claim that the Equipment of EMD's specification,

or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD shall pay all damages and costs awarded therein against the Trustee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, EMD shall at its option and at its own expense either procure for the Trustee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of EMD's rights under this Agreement if this Agreement has been so assigned, which refund to the extent of the unpaid CSA Indebtedness in respect of such unit, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Trustee.

EMD will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of each of the Builder for patent infringement by the Equipment or any part thereof.

Item 5. The Maximum Purchase Price referred to in Article 4 of the CSA to which this Annex A is attached is \$6,172,782.

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,000 h.p. Model SD 40-2 diesel- electric locomotive	EMD	8087-3	La Grange, Illinois	6	SOO 6618- 6623	\$935,270	\$5,611,620	August 3, 1984, at McCook, Illinois

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[CS&M Ref. 5415-007

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1984

Between

SOO LINE RAILROAD COMPANY,  
as Lessee,

And

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement dated as  
of the date hereof,  
as Lessor.

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The rights and interests of the Lessor under this  
Lease are subject to a security interest in favor of  
Mercantile-Safe Deposit and Trust Company, as Agent for a  
certain Institutional Investor. The original of this  
Lease is held by said Agent.

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## LEASE OF RAILROAD EQUIPMENT

### TABLE OF CONTENTS\*

	<u>Page</u>
PARTIES .....	L-1
PREAMBLES .....	L-1
GRANTING CLAUSE .....	L-1
SECTION 1. NET LEASE .....	L-2
SECTION 2. DELIVERY .....	L-3
2.1. Delivery and Acceptance of Units .....	L-3
SECTION 3. RENTALS .....	L-3
3.1. Amount and Date of Payment .....	L-3
3.2. Payments on Nonbusiness Days .....	L-5
3.3. Instructions To Pay Vendor and Lessor .....	L-5
3.4. Payment in Immediately Available Funds .....	L-6
SECTION 4. TERM OF LEASE .....	L-6
4.1. Beginning and Termination; Survival .....	L-6
4.2. Rights and Obligations of Lessee Subject to CSA .....	L-6
SECTION 5. IDENTIFICATION MARKS .....	L-6
5.1. Identifying Numbers; Legend; Changes .....	L-6
5.2. Insignia of Lessee .....	L-7
SECTION 6. TAXES .....	L-7
6.1. Indemnification fot Nonincome Taxes .....	L-7
6.2. Claims; Contests; Refunds .....	L-9
6.3. Reports or Returns .....	L-10
6.4. Survival .....	L-10

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\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.



	<u>Page</u>
SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES;	
INSURANCE .....	L-10
7.1. Definitions of Casualty Occurrence;	
Payments .....	L-10
7.2. Requisition by a Government .....	L-12
7.3. Lessee Agent for Disposal .....	L-12
7.4. Payments After Expiration of Lease .....	L-13
7.5. Amount of Casualty Value for .....	L-13
7.6. No Release .....	L-14
7.7. Insurance To Be Maintained .....	L-14
7.8. Insurance Proceeds and Condemnation	
Payments .....	L-15
SECTION 8. REPORTS .....	L-16
SECTION 9. DISCLAIMER OF WARRANTIES .....	L-16
SECTION 10. LAWS AND RULES .....	L-17
10.1. Compliance .....	L-17
10.2. Reports by Lessor .....	L-18
SECTION 11. MAINTENANCE .....	L-18
11.1. Units in Good Operating Order .....	L-18
11.2. Additions and Accessions .....	L-19
SECTION 12. INDEMNIFICATION .....	L-19
12.1. Indemnified Persons .....	L-19
12.2. Builder Indemnification .....	L-21
12.3. Survival .....	L-21
SECTION 13. DEFAULT .....	L-22
13.1. Events of Default; Remedies .....	L-22
13.2. Remedies Not Exclusive; Waiver .....	L-25
13.3. Failure To Exercise Rights Is Not Waiver ..	L-25
13.4. Notice of Event of Default .....	L-26
SECTION 14. RETURN OF UNITS UPON DEFAULT .....	L-26
14.1. Return of Units .....	L-26
14.2. Lessor Appointed Agent of Lessee .....	L-27
SECTION 15. ASSIGNMENT, POSSESSION AND USE .....	L-27
15.1. Assignment; Consent .....	L-27

	<u>Page</u>
15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units .....	L-28
15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation .....	L-29
SECTION 16. RENEWAL OPTIONS AND LIMITED RIGHT TO PURCHASE .....	L-29
16.1. Renewal for Successive Periods .....	L-29
16.2. Determination of Fair Market Rental .....	L-30
16.3. Duty to First Offer .....	L-31
SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM .....	L-31
SECTION 18. RECORDING .....	L-33
SECTION 19. INTEREST ON OVERDUE RENTALS .....	L-33
SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE ..	L-34
SECTION 21. NOTICES .....	L-34
SECTION 22. SEVERABILITY .....	L-34
SECTION 23. EFFECT AND MODIFICATION OF LEASE .....	L-35
SECTION 24. THIRD PARTY BENEFICIARIES .....	L-35
SECTION 25. EXECUTION .....	L-35
SECTION 26. LAW GOVERNING .....	L-35
SECTION 27. IMMUNITIES; NO RECOURSE .....	L-36
SECTION 28. AGREEMENTS FOR BENEFIT OF OWNERS AND OWNERS' AND LESSOR'S ASSIGNS .....	L-37
SECTION 29. TERM LESSOR AND LESSEE .....	L-37
TESTIMONIUM .....	L-37
SIGNATURES .....	L-37
ACKNOWLEDGMENTS .....	L-39
APPENDIX A Units Leased .....	L-40
APPENDIX B Rental Rates .....	L-41
APPENDIX C Schedule of Casualty Values .....	L-42

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1984, between SOO LINE RAILROAD COMPANY, a Minnesota corporation, ("Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as Trustee ("Lessor") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with Dyer Associates, a Rhode Island Limited partnership ("Owner") in which Connell Finance Company, Inc. and Textron Financial Corporation are, respectively, the limited partner and the general partner (the "Partners", or, individually a "Partner").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with General Motors Corporation (Electro-Motive Division) ("Builder") wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Appendix A hereto;

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof ("CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent for a certain investors under a Participation Agreement dated as of the date hereof ("Participation Agreement") among said agent, the Lessee, the Lessor, the Owner, the Partners and the investors named in Appendix I thereto ( "Investor" and together with its successors and assigns "Investors") (said agent as so acting, together with its successors and assigns, "Vendor");

WHEREAS the Lessee desires to lease such number of units of the railroad equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign certain of its rights under this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of the date hereof, and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement ("Consent") in the form attached to the Lease Assignment;

WHEREAS the Lessee will agree to indemnify the Owner, the Partners and the Lessor pursuant to an Indemnity Agreement dated as of the date hereof ("Indemnity Agreement") between the Lessee and the Owner, against certain losses, liabilities or expenses incurred or suffered by the Owner;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

#### SECTION 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof, recoupment or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Owner under this Lease or the CSA including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent

permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time thereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor, the Owners or the Vendor for any reason whatsoever.

## SECTION 2. DELIVERY

2.1. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Lessor under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and on behalf of itself hereunder and execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## SECTION 3. RENTALS

3.1. Amount and Date of Payment. (1) As rental for each Unit subject to this Lease, the Lessee agrees to pay to the Lessor 30 consecutive semiannual payments payable, in arrears, on January 1 and July 1 in each year, commencing July 1, 1985, to and including January 1, 2000. The 30 semiannual rental payments shall each be in an amount equal to the basic lease rate set forth in Appendix B hereto for the applicable payment date multiplied by the Purchase Price of each Unit.

(2) The basic lease rates have been calculated on the assumption that (i) the CSA Indebtedness shall bear

interest at a rate of 12.494% until October 1, 1984 and thereafter at a rate of 14.50% per annum, (ii) the amount of the fees and expenses payable by the Owners pursuant to Paragraph 13 of the Participation Agreement will be 0.50% of the aggregate Purchase Price of the Units, (iii) a permanent investor will on October 1, 1984, acquire all the Investor's interest in the CSA Indebtedness with interest thereon paid to the date of payment, without premium, and (iv) the First Delivery Date and the Settlement Date are July 31, 1984. If for any reason these assumptions prove to be incorrect, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units on and after July 1, 1985 (or after December 31, 1984, as to Casualty Values), shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Owner, cause the Owner's (and each Partner's, based on its percentage beneficial interest in the Owner) net after-tax economic and accounting yields and cash flows, computed on the same assumptions, including tax rates, as were utilized by the Owner and each Partner in originally evaluating this transaction, (such yields and cash flows being hereinafter called "Net Economic Return"), to be approximately equal to but not less than the Net Economic Return that would have been realized by the Owner and each Partner if such assumptions had proved to be correct. If requested by the Lessee, such determination shall be verified by the independent auditors of Textron Financial Corporation or such other third party as is acceptable to the Owner, each Partner and the Lessee. The cost of such verification shall be borne by the Lessee unless the aforesaid verification indicates an error in excess of 10% of the amount of the change in the total lease payments made hereunder. To the extent possible, the Lessor shall, in making the foregoing adjustments, retain the same relative pattern for the payment of rentals as is set forth in Appendix B hereto. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Vendor promptly after the facts have been determined and the calculations have been made.

(3) In the event that any dispute should arise as to the calculation of such rentals under § 3.1(2) (or the related Casualty Values), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Values), on the dates due hereunder, amounts at least equal to the principal and/or interest payable on each such date under paragraphs 4.3(b), 4.4 and 7.2 of the CSA, but no such payment shall, as between the Lessor and the Lessee, prejudice the right of the Lessor to receive

from the Lessee any amount in addition thereto, due and payable hereunder.

(4) Anything in the foregoing provisions of this § 3.1 to the contrary notwithstanding, the rentals and Casualty Values hereunder (i) shall not be less than amounts which are sufficient (a) to satisfy the obligations of the Trustee under the CSA, notwithstanding any limitation of liability contained therein, and, in addition, (b) to pay to the Owner an amount equal to the interest payments made by the Owner pursuant to Section 4.4 of the CSA, and (ii) shall not result in the Lease failing to satisfy the guidelines that are applied by the Internal Revenue Service in determining, for advance ruling purposes, whether leveraged lease transactions are leases for Federal income tax purposes.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut, Minneapolis, Minnesota or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendor and Lessor. If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Lessor under the CSA have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all Payments (as defined in the Lease Assignment) to the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor or to the order of the Lessor in immediately available funds at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Lessor under the CSA have been fully discharged and

satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Lessor in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### SECTION 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12, 14, 17 and 19 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

#### SECTION 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending



this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## SECTION 6. TAXES

6.1. Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor (both in its individual and fiduciary capacities), the Owner, the Vendor, the Partners and each Investor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor,

the Owner, the Vendor, the Partners, any Investor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the CSA, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Lessor under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof imposed on or measured solely by the net income or excess profits of the Lessor, the Trust Estate, an Investor, the Owner, a Partner or the Vendor or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Lessor, the Trust Estate, an Investor, the Owner, a Partner or the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Section 6; provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Trustee or any transfer or disposition by the Trustee resulting from bankruptcy or other proceedings for the relief of debtors in which the Trustee is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Lessor or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Lessor, the Trust Estate, an Investor, the Owner, a Partner or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the

Lessee has not agreed to pay or indemnify against pursuant to this § 6.1; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in § 6.2 hereof; and provided further, that no indemnity shall be required with respect to taxes paid to any foreign country or subdivision thereof if and to the extent that (i) any person upon whom such taxes are imposed or any indemnified person is entitled to claim and utilize a credit with respect to such foreign taxes against its Federal income tax liability and (ii) the use of such credit does not in any way or in any year impair or diminish the ability of such person to claim or utilize any foreign tax credits that would otherwise be available to it; and provided further, that if in any year the Lessee pays an indemnity to any person hereunder with respect to foreign taxes paid and such person is subsequently able to claim and utilize such foreign taxes paid as a credit against its Federal income taxes (but only if such credit may be claimed and utilized in addition to all other foreign tax credits which such person would otherwise be entitled to claim) then such person shall repay to the Lessee an amount determined in the manner provided in the Indemnity Agreement of even date herewith; and provided further, that no payment shall be required hereunder with respect to any Taxes if and to the extent that any payment is made or required to be made under the Indemnity Agreement with respect to such Taxes; and provided further, that in all cases where any payment is required to be made under this Article 6, appropriate adjustments shall be made to reflect and give credit for any tax savings realized by the indemnified person as a result of the payment of any amount for which an indemnity is required or any Taxes paid as a result of the payment hereunder. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings if (i) in the opinion of the Lessor and the Vendor such contest or the nonpayment of such tax would not adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA or (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor and the Vendor.

6.2. Claims; Contests; Refunds. If claim is made against the Lessor, the Owner or the Vendor for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor, the Owner or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor, the Owner or the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor, the Owner or the Vendor in any such proceeding or action) unless (i) in the opinion of the Lessor, the Owner or the Vendor such contest or the nonpayment of the Taxes would not adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA and (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor and the Vendor. The Lessee agrees to give the Lessor, the Owner and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Lessor, the Owner or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor, the Owner or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of expenses; provided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this § 6 (except obligations resulting from the last sentence of § 6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns including exemption certificates or affidavits with respect to any sales or use tax in such manner as to show

the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor, the Owner and the Vendor or, where not so permitted, will notify the Lessor, the Vendor and the Owner of such requirement and will prepare and deliver such reports to the Lessor, the Owner and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. Survival. All the obligations of the Lessee under this § 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the CSA or the termination of this Lease. Payments due from the Lessee to the Lessor, the Owner or the Vendor under this § 6 shall be made directly to the party indemnified.

## SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or § 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a period (either stated or as perceived by the Lessee) which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof ("Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding first business day of a month occurring at least 10 days after such notice from the Lessee has been received (but not earlier than January 1, 1985) or, at the option of the Lessee, on the next succeeding January 1 or July 1 commencing with January 1, 1985 (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus, in the case of any Casualty Payment Date coinciding with January 1 or July 1, the rental, if any, in

respect of such Unit payable by the Lessee as of such date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to § 14 or § 17 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value, and any earnings or rentals accrued pursuant to § 14 or § 17 hereof, to the Lessor on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity (collectively "Government") and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the original or any renewal term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor an amount equal to the Casualty Value of such Unit as of the end of such term. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by a Government prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by a Government following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 17 hereof.

7.2. Requisition by a Government. In the event of the requisition for use by a Government of any Unit for a period which does not exceed the then remaining term of this

Lease (except where deemed a Casualty Occurrence pursuant to § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received at any time by the Lessor or the Lessee from a Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received at any time by the Lessor or the Lessee from a Government for the use of such Unit after the term of this Lease or any renewal term thereof shall be paid over or retained by the Lessor.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis and the Lessee shall notify the Lessor prior to any such disposition if the Lessee is to be the purchaser. Provided that the Lessee has previously paid the Casualty Value to the Lessor (i) the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the CSA an amount equal to any payment made by such Builder to the Lessor in respect thereof under the CSA.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with any January 1 or July 1 on or after December 31, 1984, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date is a date other than any January 1 or July 1 after December 31, 1984, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of such Unit as is set forth opposite the date which coincides with the next preceding January 1 or July 1 in Appendix C hereto ("Rental Casualty Payment Date") plus (ii) 1.317567% of the amount described in clause (i) hereof for each month or a portion of a month elapsed from and including such Rental Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring within five full calendar years after the date which Unit was placed in service within the meaning of Section 47(a)(5) of the Code, an amount equal to the percentage of the purchase price set forth below with respect to the relevant time period:

Time Period Within Which Casualty Occurrence Occurs	Percentage of Purchase Price to be added
First full year after the Unit is placed in service	18.52%
Second full year after the Unit is placed in service	14.81%
Third full year after the Unit is placed in service	11.11%
Fourth full year after the Unit is placed in service	7.41%
Fifth full year after the Unit is placed in service	3.70%

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee will, at all times prior to the return of the Units to the



Lessor at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; provided, however, that the Lessee may self-insure such Units to the extent it customarily self-insures equipment owned or leased by it similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third-party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case reasonably satisfactory to the Lessor. The proceeds of any property insurance shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor, the Owner and the Vendor as additional named insureds and loss payees as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor, the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Lessor and the Vendor a duplicate original of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option, upon 5 business days prior written notice to the Lessee, provide such insurance and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest from the date of payment thereof, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds and Condemnation Payments. If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall pay such proceeds or condemnation payments to the Lessee; provided, however, that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

#### SECTION 8. REPORTS

On or before April 1 in each year, commencing with the calendar year 1985, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the CSA, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof have been preserved or replaced.

The Lessor, the Vendor and the Owner shall each have the right (but not any obligation) by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor, the Vendor or the Owner may request during the continuance of this Lease.

#### SECTION 9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendor based on any of the foregoing matters; provided, however, that

nothing herein shall in any way bar, reduce or defeat any claim that the Lessee may have against the Builder; provided further, that the Lessor hereby represents and warrants to the Lessee that upon delivery to it of any Unit the Lessor shall have received whatever title was conveyed to it by the Builder and that on the Closing Date (as defined in the CSA) the Units being settled for shall be free of any and all liens, charges, security interests or encumbrances resulting from claims against the Lessor not related to the ownership of the Units or the administration of the Trust Estate (as defined in the Trust Agreement) or any other transaction contemplated by the Trust Documents (as defined in the Trust Agreement).

#### SECTION 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units or are necessary to comply with health, safety or environmental standards as more fully described in Section 4(4) of Internal Revenue Service Rev. Proc. 75-21 as modified by Rev. Proc. 79-48, and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner if (i) in the reasonable opinion of the Lessor or the Vendor, such contest will not adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA and (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor and the Vendor.

10.2. Reports by Lessor. The Lessee will prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Vendor) any and all reports (other than income tax returns) to be

filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

## SECTION 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee will, at its own cost and expense, maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease (a) in good operating order, repair and condition, ordinary wear and tear excepted and (b) in compliance with any and all applicable laws and regulations. The Lessee will not discriminate against the Units to their detriment in the application of the maintenance procedures that the Lessee applies to all the locomotive units operated by it.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Units prior to the time such Units are returned as provided in §§ 14 and 17, except to the extent such additions, modifications or improvements are made as described in § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in § 11.2(1) hereof, or (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads (if applicable) or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or

encumbrance (except for those created by the CSA and the CSA Assignment) shall immediately be vested in the Lessor.

## SECTION 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor (in both its individual and fiduciary capacities), the Owners, the Vendor, each Investor and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever other than taxes which are provided for in Section 6 hereof, whether or not indemnified hereunder, which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise, out of this Lease, the CSA or the Units, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by any Indemnified Person, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (vi) any violation of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the party claiming indemnification (all of which matters

hereinabove set forth in this paragraph being hereinafter called "Indemnified Matters"). The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of any taxing jurisdiction, domestic or foreign, (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made to such Indemnified Party. Nothing in this § 12.1 shall constitute

a guarantee by the Lessee of the CSA Indebtedness under the CSA or a guarantee of the residual value of any Unit.

12.2. Builder Indemnification. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Builder because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by such Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to such Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

## SECTION 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3, 7 or 16 hereof, and such default shall continue for 10 days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or the right to possession of the Units, or any thereof;



(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or the Indemnity Agreement (other than a default solely in the observance or performance of a covenant contained in Section 4 of the Indemnity Agreement whether or not it is subject to an indemnity thereunder) and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor or any Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof (other than any representation for which the Lessee is the subject of an indemnity under the Indemnity Agreement whether or not indemnified thereunder);

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law

which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period

by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify: (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorneys fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset and/or recoupment against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim, which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee also agrees to furnish the Lessor, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this § 13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### SECTION 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or pursuant to Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when

originally delivered to the Lessee, ordinary wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall

belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

#### SECTION 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor to any successor Lessor which may be appointed pursuant to Article VII of the Trust Agreement or to any banking or financial institution which has a combined capital and surplus of at least \$50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee thereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this § 15.2. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or any

encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates or to any railroad company incorporated in the United States of America or any state thereof or the District of Columbia, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that any such sublease to any nonaffiliated railroad company shall not exceed a period equal to 180 days for any 12-month period, and provided further, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) and 168(f)(2) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph shall be subject and subordinate to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect to the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 shall be

deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, the Consent, the Participation Agreement and the Indemnity Agreement by an appropriate instrument in writing.

#### SECTION 16. RENEWAL OPTIONS AND LIMITED RIGHT TO PURCHASE

16.1. Renewal for Successive Periods. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or the first extended term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of such number of the Units as the Lessee chooses for an additional two-year period commencing on the scheduled expiration of such original term or then extended term, as the case may be, of this Lease; provided, however, that if the Lessee elects to extend the original or first extended term of this Lease as to less than all the Units, the Lessor shall select which of the Units are to be included in the extended term. The rental payable during each extended term shall be payable semiannually in arrears on January 1 and July 1 of each year of such extended term and shall be in an amount equal to the "Fair Market Rental".

16.2. Determination of Fair Market Rental. (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.



(2) If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease for any extended term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be shared equally by the Lessor and Lessee.

16.3. Duty to First Offer. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, if the Lessor decides to sell the Units at the end of the original or any extended term of this Lease, then the Lessor shall, (at any time not more

than 180 days prior to the expiration of the original or any extended term of this Lease) prior to offering the Units to any third party, offer to the Lessee the right to buy such number of the Units as the Lessee chooses at the then Fair Market Value thereof payable in cash on the later of the last day of such term or the date of the determination of the Fair Market Value; provided, that if the Lessee elects to purchase less than all of the Units, the Lessor shall select which of the Units are to be included in the Units to be purchased by the Lessee; and provided further, that the Lessee shall have no right to purchase any Units remaining after it has purchased less than all the Units. The Lessee shall notify the Lessor in writing of its acceptance or rejection of such offer not later than 20 days after receipt of notification of such offer. If the Lessor shall not have received written notice of such acceptance within such 20-day period, the Lessor shall no longer be obligated to offer such Units to the Lessee. Any notice of acceptance given by the Lessee shall be irrevocable. Fair Market Value shall be determined on the basis of criteria and procedures comparable to those established for the determination of Fair Market Rental under § 16.2 hereof, but the expenses of the appraisal proceedings shall be borne by the Lessor. Notwithstanding anything to the contrary hereinabove contained in this § 16.3, the Lessor's duty of first offer at the end of the original or any extended term of this Lease shall terminate upon the Lessor's leasing the Equipment to a third party at the expiration of such original or extended term of this Lease. Should the Lessee elect to Purchase the Units at the Fair Market Value pursuant to this Section 16.3, the Lessor shall upon request of the Lessee execute and deliver to the Lessee a bill of sale (without warranties except those as to absence of liens described below) for the Units as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and encumbrances arising through the Lessor.

#### SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 30 days thereafter, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor

to store such Unit on such tracks for a period not exceeding 180 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense of the Lessee and risk of the Lessor. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads (if applicable) and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease; and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. In the event any Unit is not assembled, delivered and stored as hereinabove provided as a result of any action or inaction on the part of the Lessee, within 30 days after such termination, the Lessee shall pay to the Lessor, for each day thereafter as liquidated damages, and not as a penalty, for the failure of the Lessee to return the Unit to the Lessor at the termination of this Lease as required by the provisions of this § 17, an amount equal to the daily equivalent of the rental factor of such Unit as in effect at the time of such termination, for each such day. The provision for such payment shall not be in abrogation of the Lessor's right under this § 17 to have each Unit returned to

it within 30 days after the termination of the original or extended term of this Lease with respect to such Unit.

#### SECTION 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the CSA. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the CSA Assignment in Canada. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada prior to the delivery and acceptance hereunder of any Unit.

#### SECTION 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to the Debt Rate (as defined in paragraph 4.4 of the CSA) plus 1% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

## SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may (but shall not be obligated to do so) upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Citibank, N.A., New York, N. Y., publicly announces as its prime rate shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

## SECTION 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to each Owner at its address set forth in Appendix II to the Participation Agreement; and

(b) if to the Lessee, at Room 800, Soo Line Building, Box 530, Minneapolis, Minnesota 55440, Attention of Harold J. Ness, Vice President.

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing.

## SECTION 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### SECTION 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

#### SECTION 24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owners, the Vendor and the permitted successors and assigns of a party, and, as to Section 12.2 hereof, the Builder) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### SECTION 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

#### SECTION 26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State

of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and Section 86 of the Railway Act of Canada.

#### SECTION 27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Lessor are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution or the Owners on account of any representation, warranty or agreement hereunder of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

SECTION 28. AGREEMENTS FOR BENEFIT OF OWNERS  
AND OWNERS' AND LESSOR'S ASSIGNS

All rights of the Lessor hereunder shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement and the Lessor's assigns including the Vendor.

The Lessee agrees for the benefit of the Owner that the Lessee's obligations under the Indemnity Agreement shall be considered rights and obligations under this Lease and inseparable therefrom.

SECTION 29. TERM LESSOR OR LESSEE

Whenever the term "Lessor" is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor (including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

SOO LINE RAILROAD COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary



THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

STATE OF MINNESOTA, )  
 ) ss.:  
COUNTY OF HENNEPIN, )

On this       day of July 1984, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of SOO LINE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this       day of July 1984, before me personally appeared       to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

# APPENDIX A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,000 h.p. Model SD40-2 diesel- electric locomotive	EMD	8087-3	La Grange, Illinois	6	S00 6618- 6623	\$935,270	\$5,611,620	August 3, 1984, at McCook, Illinois

APPENDIX B TO LEASE

Basic Lease Rates

<u>Date</u>	<u>Percentage of Purchase Price*</u>
July 1, 1985	4.520197%
January 1, 1986	6.245444%
July 1, 1986	4.395117%
January 1, 1987	6.370524%
July 1, 1987	4.251899%
January 1, 1988	6.513741%
July 1, 1988	4.087916%
January 1, 1989	6.677725%
July 1, 1989	3.900155%
January 1, 1990	6.865486%
July 1, 1990	4.539836%
January 1, 1991	6.225805%
July 1, 1991	6.551991%
January 1, 1992	4.213650%
July 1, 1992	7.631677%
January 1, 1993	4.330145%
July 1, 1993	8.749457%
January 1, 1994	4.408548%
July 1, 1994	8.924076%
January 1, 1995	4.233930%
July 1, 1995	9.113649%
January 1, 1996	4.044357%
July 1, 1996	9.318522%
January 1, 1997	3.839483%
July 1, 1997	9.539927%
January 1, 1998	3.618078%
July 1, 1998	12.286097%
January 1, 1999	.871908%
July 1, 1999	13.071412%
January 1, 2000	.000866

---

\* As defined in paragraph 4.1 of the CSA.

# APPENDIX C TO LEASE

## Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price*</u>
January 1, 1985	96.55947
July 1, 1985	102.78562
January 1, 1986	101.98847
July 1, 1986	104.74697
January 1, 1987	102.90564
July 1, 1987	105.32926
January 1, 1988	102.35141
July 1, 1988	104.37214
January 1, 1989	100.21617
July 1, 1989	101.83453
January 1, 1990	97.52983
July 1, 1990	98.21598
January 1, 1991	94.41233
July 1, 1991	92.89728
January 1, 1992	90.89400
July 1, 1992	88.08710
January 1, 1993	85.85567
July 1, 1993	81.63111
January 1, 1994	79.17200
July 1, 1994	74.37901
January 1, 1995	71.93064
July 1, 1995	66.52327
January 1, 1996	64.08855
July 1, 1996	58.01701
January 1, 1997	55.59699
July 1, 1997	48.80749
January 1, 1998	46.40327
July 1, 1998	36.33078
January 1, 1999	36.18573
July 1, 1999	24.66968
January 1, 2000	20.00000

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\* As defined in paragraph 4.1 of the CSA.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 1, 1984 ("Assignment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, acting not in its individual capacity but solely in its capacity as Trustee ("Lessor") under a Trust Agreement ("Trust Agreement") dated as of the date hereof with DYER ASSOCIATES, a Rhode Island limited partnership ("Owner") in which CONNELL FINANCE COMPANY, INC. and TEXTRON FINANCIAL CORPORATION are, respectively, the Limited Partner and the General Partner (the "Partners" or, individually, a "Partner"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent ("Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with General Motors Corporation (Electro-Motive Division) ("Builder"), providing for the sale to the Lessor of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and Soo Line Railroad Company ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Lessor to the Lessee of the Units;

WHEREAS in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in paragraph 4.3(b) of the CSA), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under the Lease (including

those inuring to the benefit of the Owner other than those contained in § 20 of the Lease and other than those contained in the Indemnity Agreement referred to therein), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys, other than the Excluded Indemnity defined below, being hereinafter called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided, however, that, notwithstanding the foregoing, the Lessor shall be entitled to receive directly from the Lessee any indemnification provided for the Lessor under §§ 6, 7 and 12 of the Lease, which indemnification is excluded from this Assignment ("Excluded Indemnity"). In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner on the same date such Payment is applied to satisfy such obligations of the Lessor by bank wire to the Owner at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner. If the Vendor shall not receive any rental payment under § 3 of the Lease or Casualty Value payment under § 7.1 of the Lease when due, the Vendor shall notify the Lessor and each Owner by telegraph, confirmed by registered mail, return receipt requested, at its address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor and the Owner shall not affect the obligations of the Lessor hereunder or under the CSA, except that the Vendor may not make a Declaration of Default (as defined in

paragraph 16.1 of the CSA) based solely on an event of default under subparagraph (a) of said paragraph 16.1 arising solely by reason of the failure of the Lessee to make any such rental or Casualty Value payment which, pursuant to subparagraph (e) of said paragraph 16.1, would not constitute an event of default thereunder if the Lessor complies with the provisions thereof, unless such event of default is not remedied within five days after notification is given as aforesaid.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claim or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.



5. Upon the full discharge and satisfaction of all sums and other obligations due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums and other obligations due from the Lessor under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and Section 86 of the Railway Act of Canada.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Lessor may, whether or not an event of default under the CSA has occurred and is then

continuing, exercise or enforce, or seek to exercise and enforce, its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease in respect of the Excluded Indemnity; provided further, however, that the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease or take any action which would cause any termination of the Lease.

11. Anything herein to the contrary notwithstanding, each and all of the representations and agreements in this Assignment made on the part of the financial institution acting as Lessor are each and every one of them made and intended not as personal representations and agreements by said financial institution in its individual capacity, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution, on account of any representation or agreement hereunder of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

This Assignment shall be effective upon delivery of fully executed counterparts hereof to Messrs. Cravath, Swaine & Moore, at their offices in New York, New York.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this            day of July 1984, before me personally appeared            to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this            day of July 1984, before me personally appeared            , to me personally known, who, being by me duly sworn, days that he is Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

### Consent and Agreement

The undersigned, the lessee ("Lessee") named in the Lease ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as the Lease Assignment is effective:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities (except the Excluded Indemnity defined in Section 1 of the Lease Assignment) and other moneys provided for in the Lease due and to become due under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent ("Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds to Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, for credit to its Corporate Trust Account No. 619478-8 with advice that the funds are "RE: SOO 7/1/84": (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor and that the Lessee will not assert against the Vendor any claim or defense the Lessee may have against the Lessor under the Lease;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment of this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Minnesota and, for all purposes, shall be construed in accordance with the laws of said state.

SOO LINE RAILROAD COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of July 1984.

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Vice President

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1984

Between

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof

and

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

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## CONDITIONAL SALE AGREEMENT

### Table of Contents\*

\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

	<u>Page</u>
PARTIES .....	C-1
PREAMBLES .....	C-1
ARTICLE 1. ASSIGNMENT; DEFINITIONS .....	C-1
1.1. Contemplated Sources of Purchase Price; CSA Assignment .....	C-1
1.2. Lease Assignment .....	C-2
1.3. Meaning of "Builder" and "Vendor" .....	C-2
ARTICLE 2. CONSTRUCTION AND SALE .....	C-2
ARTICLE 3. INSPECTION AND DELIVERY .....	C-3
3.1. Place of Delivery .....	C-3
3.2. Force Majeure .....	C-4
3.3. Exclusion of Equipment .....	C-4
3.4. Inspection .....	C-5
3.5. Builder Responsibilities After Delivery .....	C-5
ARTICLE 4. PURCHASE PRICE AND PAYMENT .....	C-5
4.1. Meaning of "Purchase Price"; Exclusion of Units .....	C-5
4.2. Settlement and Closing Dates .....	C-6
4.3. Indebtedness of Trustee to Vendor .....	C-6
4.4. CSA Indebtedness; Payment Dates; Interest .....	C-7
4.5. Calculation of Interest .....	C-7
4.6. Overdue Rate .....	C-7
4.7. Currency of Payment; Limitation on Prepayment .....	C-7



	<u>Page</u>
4.8. Liability of Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments .....	C-8
ARTICLE 5. SECURITY INTEREST IN THE EQUIPMENT .....	C-10
5.1. Vendor To Retain Security Interest; Accessories Are Part of Equipment .....	C-10
5.2. Obligations upon Payment of CSA Indebtedness .....	C-11
ARTICLE 6. TAXES .....	C-12
6.1. Indemnification of Nonincome Taxes .....	C-12
6.2. Claims; Contests; Refunds .....	C-13
6.3. Reports or Returns .....	C-14
ARTICLE 7. MAINTENANCE, CASUALTY OCCURRENCES .....	C-14
7.1. Maintenance .....	C-14
7.2. Casualty Occurrences .....	C-14
7.3. Obligations upon Payment of Casualty Value .....	C-15
7.4. Casualty Value .....	C-15
ARTICLE 8. INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS .....	C-16
ARTICLE 9. REPORTS AND INSPECTIONS .....	C-16
ARTICLE 10. MARKING OF EQUIPMENT .....	C-16
10.1. Marking of Equipment .....	C-16
10.2. No Designations of Ownership .....	C-17
ARTICLE 11. COMPLIANCE WITH LAWS AND RULES .....	C-17
11.1. Compliance with Laws and Rules .....	C-17
ARTICLE 12. POSSESSION AND USE .....	C-18
12.1. Possession and Use of Equipment by Trustee .....	C-18

	<u>Page</u>
12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination .....	C-18
12.3. Other Leases of Equipment .....	C-18
ARTICLE 13. PROHIBITION AGAINST LIENS .....	C-18
13.1. Trustee To Discharge Liens .....	C-18
13.2. No Breach for Certain Liens .....	C-19
13.3. Article 13 Subject to Article 23 Except in Certain Instances .....	C-19
ARTICLE 14. INDEMNITIES AND WARRANTIES .....	C-20
14.1. Indemnification .....	C-20
14.2. Survival; No Subrogation .....	C-21
14.3. Trustee Not Released if Equipment Damaged or Lost .....	C-21
14.4. Builder Warranties; Patent Indemnities; Subject to Article 23 .....	C-21
ARTICLE 15. ASSIGNMENTS .....	C-22
15.1. Assignment by Trustee .....	C-22
15.2. Assignment by Vendor .....	C-22
15.3. Notice of Assignment by Vendor .....	C-22
15.4. No Setoff Against CSA Indebtedness upon Assignment .....	C-23
ARTICLE 16. DEFAULTS .....	C-23
16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness .....	C-23
16.2. Waiver of Defaults .....	C-26
ARTICLE 17. REMEDIES .....	C-26
17.1. Vendor May Take Possession of Equipment .....	C-26
17.2. Assembling of Equipment for Vendor .....	C-27
17.3. Vendor May Dispose of or Retain Equipment .....	C-28
17.4. Vendor May Sell Equipment; Trustee's Right of Redemption .....	C-28
17.5. Sale of Equipment by Vendor .....	C-29
17.6. Effect of Remedies and Powers and Exercise Thereof .....	C-30

	<u>Page</u>
17.7. Deficiencies .....	C-30
17.8. Expenses .....	C-30
17.9. Remedies Subject to Mandatory Legal Requirements .....	C-31
ARTICLE 18. APPLICABLE STATE LAWS .....	C-31
18.1. Conflict with State Laws .....	C-31
18.2. Waiver of Notices .....	C-31
ARTICLE 19. RECORDING .....	C-31
ARTICLE 20. REPRESENTATIONS AND WARRANTIES OF BUILDER .....	C-32
ARTICLE 21. ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT .....	C-32
21.1. Article and Paragraph Headings for Convenience Only .....	C-32
21.2. Effect and Modification of Agreement ....	C-32
ARTICLE 22. NOTICE .....	C-33
ARTICLE 23. IMMUNITIES; SATISFACTION OF UNDER- TAKINGS .....	C-33
23.1. No Recourse Against Certain Persons .....	C-33
23.2. Satisfaction of Certain Covenants .....	C-34
23.3. No Personal Liability of Trustee .....	C-34
ARTICLE 24. LAW GOVERNING .....	C-35
ARTICLE 25. EXECUTION .....	C-36
TESTIMONIUM .....	C-36
SIGNATURES .....	C-36
ACKNOWLEDGMENTS .....	C-37
Schedule I .....	C-38
Annex A--Miscellaneous .....	C-39
Annex B--Equipment Table .....	C-41
Annex C--Lease .....	
Annex D--Assignment of Lease and Agreement .....	

CONDITIONAL SALE AGREEMENT dated as of July 1, 1984, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation ("Builder" or "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof) and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as Trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with Dyer Associates, a Rhode Island Limited Partnership (the "Owner") in which Connell Finance Company, Inc. and Textron Financial Corporation are, respectively, the Limited Partner and the General Partner (the "Partners" or individually a "Partner").

WHEREAS the Builder has agreed to construct, sell and deliver to the Trustee, and the Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment");

WHEREAS the Trustee is entering into a lease with SOO LINE RAILROAD COMPANY, a Minnesota corporation ("Lessee"), substantially in the form annexed hereto as Annex C ("Lease"); and

WHEREAS MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY ("Assignee") is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement"), among the Lessee, the Assignee, the Trustee, the Owner, the Partners and the investors named in Appendix I thereto ("Investors").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

## ARTICLE 1

### ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; CSA Assignment. The parties hereto contemplate that the Trustee

will furnish 37.652% of the Purchase Price (as defined in paragraph 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between the Builder and the Assignee.

1.2. Lease Assignment. The Trustee will assign to the Vendor, as security for the payment and performance of all the Trustee's obligations hereunder, all right, title and interest of the Trustee with certain exceptions in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the units of Equipment to be constructed by such party and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

## ARTICLE 2

### CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto and will sell and deliver the Equipment to the Trustee, and the Trustee will purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called "Specifications"). The Builder represents and warrants that (i) the design, quality and component parts of

each unit of the Equipment to be delivered under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and (ii) each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not be more than 20% of the cost of material and parts used in constructing such unit and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Trustee.

### ARTICLE 3

#### INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of the Equipment to the Trustee at the place or places specified in Annex B hereto or such other place or places designated from time to time by the Trustee, freight charges and storage charges, if any, prepaid for the account of the Trustee, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of paragraph 16.1 hereof or the occurrence of any event of default (as described in paragraph 16.1 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, unless it has been assured to its satisfaction that it will receive the full Purchase Price (as defined in paragraph 4.1 hereof) thereof. The Builder agrees not to deliver any unit of its Equipment hereunder (a) until it receives notice from the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and from the Trustee that the conditions contained in Paragraph 8 of the Participation Agreement have been met, (b) following receipt of written notice from the Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, until such time as such written notice may be canceled by a further written notice, or (c) following receipt of written notice from the Assignee or the Trustee

of its determination that there has been a material adverse change in the business or financial condition of the Lessee from that shown in its audited consolidated balance sheet as of December 31, 1983.

3.2. Force Majeure. The Builder's obligation as to time of delivery is subject to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Any Equipment not delivered pursuant to paragraph 3.1 hereof and any Equipment not delivered and accepted hereunder on or before September 30, 1984 (whether because of delays of the nature described in paragraph 3.2 hereof or otherwise), shall be excluded from this Agreement, and the Trustee shall be relieved of its obligations to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this paragraph 3.3 or pursuant to paragraph 4.1 hereof, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with the Builder relating to the Equipment ("Purchase Order") unless arrangements satisfactory to the Builder have otherwise been made for financing such units, and the Trustee will reassign, transfer and set over to or upon the order of the Lessee all the right, title and interest of the Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto. The delivery to and acceptance by or on behalf of the Trustee of any unit of Equipment so excluded shall be ineffective, ab initio, to create in or transfer to the Trustee any legal or beneficial right or interest in such unit or (except as provided in paragraph 4.1 hereof) to impose on the Trustee any liability, obligation or responsibility with respect thereto.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees or agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder will inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Trustee (who may be an employee or agent of the Lessee) shall execute and deliver to the Builder of such units of Equipment a certificate of acceptance ("Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Trustee and are marked in accordance with paragraph 10.1 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 hereof. By Section 2 of the Lease, the Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to Section 2 of the Lease shall be deemed to be acceptance of such unit by the Trustee.

3.5. Builder Responsibilities After Delivery. On delivery by the Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 hereof.

#### ARTICLE 4

##### PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as



so increased or decreased. If on any Closing Date (as hereinafter defined in paragraph 4.2) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder (and any assignee of the Builder) and the Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price, and the Trustee shall have no further obligation or liability in respect of units so excluded. Any units so excluded shall be excluded in the reverse order of their acceptance hereunder.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The term "Closing Date" with respect to any Group shall be August 10, 1984. The closing on each Closing Date shall take place at the offices of Cravath, Swaine & Moore in New York, New York. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut, Minneapolis, Minnesota, or Baltimore, Maryland, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 37.652% of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in 15 installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable

in installments under this subparagraph (b) being hereinafter called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.

(1) The installments of the CSA Indebtedness shall be payable on January 1 each year from 1986 to 1991, inclusive, and on July 1 each year from 1991 to 1999, inclusive, each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness shall bear interest at 12.494% per annum until October 1, 1984, and thereafter at a rate of 14.5% per annum ("Debt Rate"). Interest on the unpaid balance of the CSA Indebtedness shall be payable on January 1 and July 1 each year, commencing January 1, 1985, to and including July 1, 1999 (each such date being hereinafter called an "Interest Payment Date"). The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Assignee will furnish to the Vendor and the Lessee promptly after the last Closing Date an accurate and complete schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date and on each Interest Payment Date.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next business day, and no interest shall be payable thereon from and after the scheduled date for payment thereof to such next business day.

4.5. Calculation of Interest. Interest payable under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. Overdue Rate. The Trustee will pay interest at the Debt Rate plus 1% per annum ("Overdue Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment; Limitation on Prepayment. All payments provided for in this Agreement shall be

made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due, except as provided in Article 7 hereof, paragraph 16.1 hereof, Paragraph 20 of the Participation Agreement or the next sentence. If an Event of Default under Clause A of § 13.1 of the Lease has occurred and is continuing and has continued for over one calendar year, the Trustee may, at its option, upon 30 days' prior written notice to the Vendor prepay the entire CSA Indebtedness, without premium or penalty, by payment of the entire unpaid principal amount thereof, together with accrued interest thereon to the date of prepayment, unless payment of the amount in default under said Clause A is made by the Lessee within such 30-day period; it being understood and agreed, however, that such right of payment by the Lessee shall not affect the rights and remedies of the Vendor under Articles 16 and 17 hereof.

4.8. Liability of Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this paragraph 4.8), but not limiting the effect of Article 23 hereof, the liability of the Trustee or any assignee of the Trustee for all payments to be made by it under and pursuant to this Agreement (with the exception only of the payments to be made pursuant to paragraph 4.3(a) hereof, and the amounts payable pursuant to the proviso to paragraph 13.3 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be required to be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of the Trustee. In addition, the Vendor agrees that the Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto), insofar as it relates to

the Lessee or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in paragraph 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except the Excluded Indemnity defined in Section 1 of the Lease Assignment) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including any amounts of Excluded Indemnity or any amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under § 13.1(A) of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

## ARTICLE 5

### SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessories Are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment

(i) which are not readily removable without causing material damage to such unit or (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor or the Trustee. However, the Vendor, if so requested by the Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment and (c) pay to the Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Trustee.

## ARTICLE 6

### TAXES

6.1. Indemnification of Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Trustee agrees to pay, and to indemnify and hold the Vendor and each Investor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Trustee, the Owner, the Partners, the Vendor, the Lessee, the Trust Estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the CSA Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or any state or political subdivision thereof imposed on or measured solely by the net income or excess profits of any indemnified person, the Trust Estate, the Trustee, the Owner or a Partner, or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of any indemnified person, the Trust Estate, the Trustee, the Owner or a Partner, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by an Investor or the Vendor; (iii) Taxes which are imposed on or measured solely by the net income of any indemnified person, the Trust Estate, the Trustee, the Owner or a Partner if and to the extent that such Taxes are in substitution for or reduce the Taxes

payable by any other person which the Trustee has not agreed to pay or indemnify against pursuant to this Article 6 and (iv) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Trustee, or any transfer or disposition by the Trustee resulting from bankruptcy or other proceedings for the relief of debtors in which the Trustee is the debtor, or any interest in any Unit or interest in rentals under the Lease; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in paragraph 6.2 hereof; and provided further that no indemnity shall be required with respect to taxes paid to any foreign country or subdivision thereof if and to the extent that (i) any person upon whom such taxes are imposed or any person indemnified hereunder is entitled to claim and can utilize a credit with respect to such foreign taxes against its Federal income tax liability and (ii) the use of such credit does not in any way or in any year impair or diminish the ability of such person to claim or utilize any foreign tax credits that would otherwise be available to it; and provided further that if in any year the Trustee pays an indemnity to any such person hereunder with respect to foreign taxes paid and such person is subsequently able to claim and utilize such foreign taxes paid as a credit against its Federal income taxes (but only if such credit may be claimed and utilized in addition to all other foreign tax credits which such person would otherwise be entitled to claim) then such person shall repay to the Trustee an amount determined in the manner provided in Section 7 of the Indemnity Agreement of even date herewith; and provided further that, in all cases where any payment is to be made hereunder, appropriate adjustments shall be made to reflect and give credit for any tax savings realized by an indemnified person as a result of any payment of any amount giving rise to the payment hereunder or any Taxes paid as a result of the payment hereunder.

6.2. Claims; Contests; Refunds. If claim is made against an indemnified person for any Taxes indemnified against under this Article 6, an indemnified person shall promptly notify the Trustee. If reasonably requested by the Trustee in writing, such indemnified person shall, upon receipt of any indemnity reasonably satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and



proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of an indemnified person; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of an indemnified person in any such proceeding or action) without the prior written consent of an indemnified person, which consent shall not be unreasonably withheld. If an indemnified person shall obtain a refund of all or any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or otherwise or an amount representing interest thereon, the indemnified person shall pay the Trustee the amount of such refund or interest net of expenses together with any tax benefits derived from any payment pursuant to this sentence; provided, however, that no event of default set forth in paragraph 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Trustee under or arising out of this Article 6, the Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Trustee.

## ARTICLE 7

### MAINTENANCE; CASUALTY OCCURRENCES

7.1. Maintenance. Subject to the limitations contained in Article 23 hereof, the Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Trustee shall, promptly after it shall have received notice from the Lessee or

otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Casualty Payment Date (as defined in § 7.1 of the Lease), the Trustee shall, subject to the limitations contained in paragraph 4.8 hereof, pay to the Vendor a sum equal to the Casualty Value (as defined in paragraph 7.4 hereof) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 hereof.

7.3. Obligations upon Payment of Casualty Value. Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor or the Trustee, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

7.4. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original

Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

## ARTICLE 8

### INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Trustee shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9

### REPORTS AND INSPECTIONS

On or before April 1 in each year, commencing with the year 1985, the Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10

### MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The

Trustee will not permit the road number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in paragraph 10.1 hereof, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## ARTICLE 11

### COMPLIANCE WITH LAWS AND RULES

11.1. Compliance with Laws and Rules. During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12

### POSSESSION AND USE

12.1. Possession and Use of Equipment by Trustee. The Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall, except as provided in § 15.2 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. Other Leases of Equipment. Subject to the rights of the Lessee under the Lease, the Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

## ARTICLE 13

### PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof and will

promptly discharge any such lien, charge or security interest which arises; but the Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent or being contested in good faith by appropriate proceedings, promptly commenced and diligently prosecuted.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. All obligations of the Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Trustee, and to the extent that it receives funds sufficient for such purpose from the Owner as required by the Trust Agreement, from, through or under the Owner, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including all income taxes arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment), which, if not paid or discharged, could become a lien, charge or security interest on the Equipment or any unit thereof or the Vendor's interest in the Lease and the payments to be made thereunder; but the Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in or to the Lease and the payments to be made thereunder.

## ARTICLE 14

### INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay, and shall protect, indemnify and hold the Vendor, each Investor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever (other than Taxes which are provided for in Article 6 hereof whether or not indemnified thereunder) which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of any Indemnified Matter (as defined in § 12.1 of the Lease); except that the Trustee shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from any tort (including strict liability or products liability in contract or tort), breach of warranty or failure to perform any covenant hereunder of the Builder or is covered by the Builder's patent indemnification referred to in paragraph 14.4 hereof. The Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Trustee may and, upon such Indemnified Person's request, will at the Trustee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person; and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt

thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Trustee, and provided that no event of default set forth in paragraph 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Trustee) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Trustee to the extent necessary to reimburse the Trustee for indemnification payments previously made in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Trustee Not Released if Equipment Damaged or Lost. The Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. Builder Warranties; Patent Indemnities; Subject to Article 23. The agreement of the parties relating to the Builder warranties of material and



workmanship and the limitations of liability and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. Such warranties and patent indemnification shall be for the benefit of the Trustee and the Lessee and their respective successors and assigns.

## ARTICLE 15

### ASSIGNMENTS

15.1. Assignment by Trustee. Except as provided in Article VII of the Trust Agreement, the Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. Assignment by Vendor. Any and all of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof or relieve the Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment, either the assignor or the assignee shall give written notice to the Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee; and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness upon Assignment. The Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Trustee arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against the Builder.

## ARTICLE 16

### DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Trustee shall fail to pay or cause to be paid in full the principal of and interest on the CSA Indebtedness or any Casualty Value payment when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 15 days after the Assignee has sent Notice of such default to the Owner and each Partner; or

(b) the Trustee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4

or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under any provision of Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereinafter be amended; or

(d) any other proceeding shall be commenced by or against the Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Trustee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Trustee under this Agreement or the Lessee under the Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee or the Lessee, as the case may be, or for their respective property in connection with any such

proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) any Event of Default under clause A of § 13.1 of the Lease shall have occurred and be continuing unless the Trustee shall have cured the corresponding event of default hereunder within five days of written notice of such event of default;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate to the extent legally enforceable. In addition, if the Trustee does not pay the entire unpaid CSA Indebtedness, together with interest thereon accrued and unpaid to the date of payment, within 30 days of such notice of Declaration of Default, the Vendor may, upon written notice to the Vendee and the Lessee, subject to the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Trustee acknowledges the right of the Vendor to terminate the term of the Lease) and the Vendor may exercise the other remedies provided in Article 17 hereof; provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Vendor (under the Lease Assignment), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Vendor (under the Lease Assignment), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property

of the Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Trustee shall promptly notify the Vendor of any event of which it has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. In the case of the Trustee, knowledge shall mean actual knowledge of an officer or employee in its Corporate Trust Department.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is agreed by the Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extent to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17

### REMEDIES

17.1. Vendor May Take Possession of Equipment. Subject to the provisions of paragraph 16.1 hereof and the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other

facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) transport the same to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, the Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, upon such notice and consent as hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and the Trustee consents thereto in writing, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided further, that if the Trustee does not consent to the retention of the Equipment or if the Lessee or any other person notified under the terms of this paragraph objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. Subject to the provisions of paragraph 16.1 hereof and the Lessee's rights of possession, use and assignment under §§ 4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one

or more of the units thereof, free from any and all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Trustee and the Lessee shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall



not be accountable to the Trustee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall, subject to the limitations of paragraph 4.8 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of paragraph 4.8 and Article 23 hereof, be entitled to recover a judgment therefor against the Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee.

17.8. Expenses. The Trustee will pay all reasonable expenses, including attorney's fees, incurred by the Vendor in enforcing its remedies under the terms of this

Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorney's fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations set forth in paragraph 4.8 and Article 23 hereof.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18

### APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

## ARTICLE 19

### RECORDING

Subject to the provisions of Article 23 hereof, the Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant

to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to The Railway Act of Canada; and the Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

## ARTICLE 20

### REPRESENTATIONS AND WARRANTIES OF BUILDER

The Builder hereby represents and warrants to the Trustee, its successors and assigns, that this Agreement is duly authorized, executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

## ARTICLE 21

### ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Paragraph Headings for Convenience Only. All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing

and signed by duly authorized representatives of the Vendor and the Trustee.

## ARTICLE 22

### NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, as its chief place of business at the following specified addresses:

(a) to the Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with a copy each to each Owner at its address set forth in Appendix II to the Participation Agreement;

(b) to the Builder, at the address specified in Item 1 of Annex A hereto; and

(c) to any assignee of the Vendor, or the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties.

## ARTICLE 23

### IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owners whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Trustee under paragraphs 7.1, 17.2, 17.7 and 17.8 hereof and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof) by the Lessee's execution and delivery of the Lease. The Trustee shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for a default. Until the security interest of the Vendor is discharged as provided in Article 5 of this Agreement, no waiver or amendment of the Lessee's undertaking under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Trustee increasing or decreasing the rentals or casualty values payable pursuant to §§ 3 and 7 of the Lease to the extent permitted by the Indemnity Agreement or § 3.1 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor, together with a certificate of the Trustee certifying to the Vendor that such increase or decrease is in accordance with the provisions of the Indemnity Agreement or § 3.1 of the Lease and the adjusted amounts set forth in such agreement have not been reduced below those necessary to satisfy the obligations of the Trustee hereunder.

23.3. No Personal Liability of Trustee. Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Trustee are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed hereunder by or shall at any time be asserted or enforceable against said financial institution on account of any representation, warranty or agreement hereunder of the Trustee (except for the obligations of the Trustee to comply with the provisions of the

proviso of Article 13.3 hereof); either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this paragraph 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that, except as aforesaid, the Trustee in its fiduciary or individual capacity shall not have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Trustee or the Owner) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

## ARTICLE 24

### LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and Section 86 of The Railway Act of Canada such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof as shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25

EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

\_\_\_\_\_  
Vice President


[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

THE CONNECTICUT BANK AND  
TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee  
as aforesaid,

by

  
\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

  
\_\_\_\_\_  
Authorized Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this       day of July 1984, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this <sup>14th</sup> day of <sup>AUG</sup> July 1984, before me personally appeared **V. Kreuscher** , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the Corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
\_\_\_\_\_  
Notary Public

(Notarial Seal)

My Commission expires

**FATTY A. LYNCH**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MARCH 31, 1987



# SCHEDULE I

## 14.50% Interest Rate Allocation Schedule of Each \$1,000,000 of CSA Indebtedness Payable

<u>Date Due</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
7/1/84	000.00	000.00	000.00	1,000,000.00
1/1/85	57,420.39	57,420.39	000.00	1,000,000.00
7/1/85	72,500.02	72,500.00	0.02	999,999.98
1/1/86	100,171.44	72,500.00	27,671.44	972,328.54
7/1/86	70,493.84	70,493.82	0.02	972,328.52
1/1/87	102,177.62	70,493.82	31,683.80	940,644.72
7/1/87	68,196.76	68,196.74	0.02	940,644.70
1/1/88	104,474.69	68,196.74	36,277.95	904,366.75
7/1/88	65,566.61	65,566.59	0.02	904,366.73
1/1/89	107,104.84	65,566.59	41,538.25	862,828.48
7/1/89	62,555.08	62,555.06	0.02	862,828.46
1/1/90	100,406.87	62,555.06	37,851.81	824,976.65
7/1/90	59,810.83	59,810.81	0.02	824,976.63
1/1/91	88,988.69	59,810.81	29,177.88	795,798.75
7/1/91	90,435.84	57,695.41	32,740.43	763,058.32
1/1/92	55,321.75	55,321.73	0.02	763,058.30
7/1/92	102,197.09	55,321.73	46,875.36	716,182.94
1/1/93	51,923.28	51,923.26	0.02	716,182.92
7/1/93	113,260.97	51,923.26	61,337.71	654,845.21
1/1/94	47,476.30	47,476.28	0.02	654,845.19
7/1/94	112,846.70	47,476.28	65,370.42	589,474.77
1/1/95	42,736.94	42,736.92	0.02	589,474.75
7/1/95	113,379.29	42,736.92	70,642.37	518,832.38
1/1/96	37,615.37	37,615.35	0.02	518,832.36
7/1/96	113,958.14	37,615.35	76,342.79	442,489.57
1/1/97	32,080.51	32,080.49	0.02	442,489.55
7/1/97	114,583.69	32,080.49	82,503.20	359,986.35
1/1/98	26,099.03	26,099.01	0.02	359,986.33
7/1/98	193,193.73	26,099.01	167,094.72	192,891.61
1/1/99	13,984.66	13,984.64	0.02	192,891.59
7/1/99	206,876.17	13,984.64	192,891.53	0.06
1/1/00	0.06	0.00	0.06	(-.00)
	<hr/> 2,527,837.20	<hr/> 1,527,837.20	<hr/> 1,000,000.00	<hr/> (-.00)

ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

Item 1. General Motors Corporation (ElectroMotive Division), a Delaware corporation, having an address at La Grange, Illinois 60525 ("EMD").

Item 2. The Equipment shall be settled for in one Group. Unless the parties otherwise agree the Group shall be settled for within 10 business days of the First Delivery Date.

Item 3. EMD warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (this "Agreement") and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. EMD agrees to correct such defects, which examination shall disclose to EMD's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of EMD's obligation with respect to such defect under this warranty.

EMD warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to EMD.

EMD further agrees that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification of any rights under this Item 3.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP EXPRESSED OR IMPLIED, MADE BY THE BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 4. EMD shall defend any suit or proceeding brought against the Trustee, the Lessee and/or each assignee of EMD's rights under this Agreement so far as the same is based on a claim that the Equipment of EMD's specification,

or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD shall pay all damages and costs awarded therein against the Trustee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, EMD shall at its option and at its own expense either procure for the Trustee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of EMD's rights under this Agreement if this Agreement has been so assigned, which refund to the extent of the unpaid CSA Indebtedness in respect of such unit, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Trustee.

EMD will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of each of the Builder for patent infringement by the Equipment or any part thereof.

Item 5. The Maximum Purchase Price referred to in Article 4 of the CSA to which this Annex A is attached is \$6,172,782.

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,000 h.p. Model SD 40-2 diesel- electric locomotive	EMD	8087-3	La Grange, Illinois	6	SOO 6618- 6623	\$935,270	\$5,611,620	August 3, 1984, at McCook, Illinois

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[CS&M Ref. 5415-007

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1984

Between

SOO LINE RAILROAD COMPANY,  
as Lessee,

And

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement dated as  
of the date hereof,  
as Lessor.

---

The rights and interests of the Lessor under this  
Lease are subject to a security interest in favor of  
Mercantile-Safe Deposit and Trust Company, as Agent for a  
certain Institutional Investor. The original of this  
Lease is held by said Agent.

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## LEASE OF RAILROAD EQUIPMENT

### TABLE OF CONTENTS\*

	<u>Page</u>
PARTIES .....	L-1
PREAMBLES .....	L-1
GRANTING CLAUSE .....	L-1
SECTION 1. NET LEASE .....	L-2
SECTION 2. DELIVERY .....	L-3
2.1. Delivery and Acceptance of Units .....	L-3
SECTION 3. RENTALS .....	L-3
3.1. Amount and Date of Payment .....	L-3
3.2. Payments on Nonbusiness Days .....	L-5
3.3. Instructions To Pay Vendor and Lessor .....	L-5
3.4. Payment in Immediately Available Funds .....	L-6
SECTION 4. TERM OF LEASE .....	L-6
4.1. Beginning and Termination; Survival .....	L-6
4.2. Rights and Obligations of Lessee Subject to CSA .....	L-6
SECTION 5. IDENTIFICATION MARKS .....	L-6
5.1. Identifying Numbers; Legend; Changes .....	L-6
5.2. Insignia of Lessee .....	L-7
SECTION 6. TAXES .....	L-7
6.1. Indemnification fot Nonincome Taxes .....	L-7
6.2. Claims; Contests; Refunds .....	L-9
6.3. Reports or Returns .....	L-10
6.4. Survival .....	L-10

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\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES;	
INSURANCE .....	L-10
7.1. Definitions of Casualty Occurrence;	
Payments .....	L-10
7.2. Requisition by a Government .....	L-12
7.3. Lessee Agent for Disposal .....	L-12
7.4. Payments After Expiration of Lease .....	L-13
7.5. Amount of Casualty Value for .....	L-13
7.6. No Release .....	L-14
7.7. Insurance To Be Maintained .....	L-14
7.8. Insurance Proceeds and Condemnation	
Payments .....	L-15
SECTION 8. REPORTS .....	L-16
SECTION 9. DISCLAIMER OF WARRANTIES .....	L-16
SECTION 10. LAWS AND RULES .....	L-17
10.1. Compliance .....	L-17
10.2. Reports by Lessor .....	L-18
SECTION 11. MAINTENANCE .....	L-18
11.1. Units in Good Operating Order .....	L-18
11.2. Additions and Accessions .....	L-19
SECTION 12. INDEMNIFICATION .....	L-19
12.1. Indemnified Persons .....	L-19
12.2. Builder Indemnification .....	L-21
12.3. Survival .....	L-21
SECTION 13. DEFAULT .....	L-22
13.1. Events of Default; Remedies .....	L-22
13.2. Remedies Not Exclusive; Waiver .....	L-25
13.3. Failure To Exercise Rights Is Not Waiver ..	L-25
13.4. Notice of Event of Default .....	L-26
SECTION 14. RETURN OF UNITS UPON DEFAULT .....	L-26
14.1. Return of Units .....	L-26
14.2. Lessor Appointed Agent of Lessee .....	L-27
SECTION 15. ASSIGNMENT, POSSESSION AND USE .....	L-27
15.1. Assignment; Consent .....	L-27

	<u>Page</u>
15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units .....	L-28
15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation .....	L-29
SECTION 16. RENEWAL OPTIONS AND LIMITED RIGHT TO PURCHASE .....	L-29
16.1. Renewal for Successive Periods .....	L-29
16.2. Determination of Fair Market Rental .....	L-30
16.3. Duty to First Offer .....	L-31
SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM .....	L-31
SECTION 18. RECORDING .....	L-33
SECTION 19. INTEREST ON OVERDUE RENTALS .....	L-33
SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE ..	L-34
SECTION 21. NOTICES .....	L-34
SECTION 22. SEVERABILITY .....	L-34
SECTION 23. EFFECT AND MODIFICATION OF LEASE .....	L-35
SECTION 24. THIRD PARTY BENEFICIARIES .....	L-35
SECTION 25. EXECUTION .....	L-35
SECTION 26. LAW GOVERNING .....	L-35
SECTION 27. IMMUNITIES; NO RECOURSE .....	L-36
SECTION 28. AGREEMENTS FOR BENEFIT OF OWNERS AND OWNERS' AND LESSOR'S ASSIGNS .....	L-37
SECTION 29. TERM LESSOR AND LESSEE .....	L-37
TESTIMONIUM .....	L-37
SIGNATURES .....	L-37
ACKNOWLEDGMENTS .....	L-39
APPENDIX A Units Leased .....	L-40
APPENDIX B Rental Rates .....	L-41
APPENDIX C Schedule of Casualty Values .....	L-42



LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1984, between SOO LINE RAILROAD COMPANY, a Minnesota corporation, ("Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as Trustee ("Lessor") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with Dyer Associates, a Rhode Island Limited partnership ("Owner") in which Connell Finance Company, Inc. and Textron Financial Corporation are, respectively, the limited partner and the general partner (the "Partners", or, individually a "Partner").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with General Motors Corporation (Electro-Motive Division) ("Builder") wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Appendix A hereto;

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof ("CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent for a certain investors under a Participation Agreement dated as of the date hereof ("Participation Agreement") among said agent, the Lessee, the Lessor, the Owner, the Partners and the investors named in Appendix I thereto ( "Investor" and together with its successors and assigns "Investors") (said agent as so acting, together with its successors and assigns, "Vendor");

WHEREAS the Lessee desires to lease such number of units of the railroad equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign certain of its rights under this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of the date hereof, and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement ("Consent") in the form attached to the Lease Assignment;

WHEREAS the Lessee will agree to indemnify the Owner, the Partners and the Lessor pursuant to an Indemnity Agreement dated as of the date hereof ("Indemnity Agreement") between the Lessee and the Owner, against certain losses, liabilities or expenses incurred or suffered by the Owner;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

#### SECTION 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof, recoupment or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Owner under this Lease or the CSA including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent

permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time thereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor, the Owners or the Vendor for any reason whatsoever.

## SECTION 2. DELIVERY

2.1. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Lessor under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and on behalf of itself hereunder, and execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## SECTION 3. RENTALS

3.1. Amount and Date of Payment. (1) As rental for each Unit subject to this Lease, the Lessee agrees to pay to the Lessor 30 consecutive semiannual payments payable, in arrears, on January 1 and July 1 in each year, commencing July 1, 1985, to and including January 1, 2000. The 30 semiannual rental payments shall each be in an amount equal to the basic lease rate set forth in Appendix B hereto for the applicable payment date multiplied by the Purchase Price of each Unit.

(2) The basic lease rates have been calculated on the assumption that (i) the CSA Indebtedness shall bear

interest at a rate of 12.494% until October 1, 1984 and thereafter at a rate of 14.50% per annum, (ii) the amount of the fees and expenses payable by the Owners pursuant to Paragraph 13 of the Participation Agreement will be 0.50% of the aggregate Purchase Price of the Units, (iii) a permanent investor will on October 1, 1984, acquire all the Investor's interest in the CSA Indebtedness with interest thereon paid to the date of payment, without premium, and (iv) the First Delivery Date and the Settlement Date are July 31, 1984. If for any reason these assumptions prove to be incorrect, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units on and after July 1, 1985 (or after December 31, 1984, as to Casualty Values), shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Owner, cause the Owner's (and each Partner's, based on its percentage beneficial interest in the Owner) net after-tax economic and accounting yields and cash flows, computed on the same assumptions, including tax rates, as were utilized by the Owner and each Partner in originally evaluating this transaction, (such yields and cash flows being hereinafter called "Net Economic Return"), to be approximately equal to but not less than the Net Economic Return that would have been realized by the Owner and each Partner if such assumptions had proved to be correct. If requested by the Lessee, such determination shall be verified by the independent auditors of Textron Financial Corporation or such other third party as is acceptable to the Owner, each Partner and the Lessee. The cost of such verification shall be borne by the Lessee unless the aforesaid verification indicates an error in excess of 10% of the amount of the change in the total lease payments made hereunder. To the extent possible, the Lessor shall, in making the foregoing adjustments, retain the same relative pattern for the payment of rentals as is set forth in Appendix B hereto. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Vendor promptly after the facts have been determined and the calculations have been made.

(3) In the event that any dispute should arise as to the calculation of such rentals under § 3.1(2) (or the related Casualty Values), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Values), on the dates due hereunder, amounts at least equal to the principal and/or interest payable on each such date under paragraphs 4.3(b), 4.4 and 7.2 of the CSA, but no such payment shall, as between the Lessor and the Lessee, prejudice the right of the Lessor to receive

from the Lessee any amount in addition thereto, due and payable hereunder.

(4) Anything in the foregoing provisions of this § 3.1 to the contrary notwithstanding, the rentals and Casualty Values hereunder (i) shall not be less than amounts which are sufficient (a) to satisfy the obligations of the Trustee under the CSA, notwithstanding any limitation of liability contained therein, and, in addition, (b) to pay to the Owner an amount equal to the interest payments made by the Owner pursuant to Section 4.4 of the CSA, and (ii) shall not result in the Lease failing to satisfy the guidelines that are applied by the Internal Revenue Service in determining, for advance ruling purposes, whether leveraged lease transactions are leases for Federal income tax purposes.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut, Minneapolis, Minnesota or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendor and Lessor. If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Lessor under the CSA have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all Payments (as defined in the Lease Assignment) to the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor or to the order of the Lessor in immediately available funds at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Lessor under the CSA have been fully discharged and

satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Lessor in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### SECTION 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12, 14, 17 and 19 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

#### SECTION 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending

this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## SECTION 6. TAXES

6.1. Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor (both in its individual and fiduciary capacities), the Owner, the Vendor, the Partners and each Investor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor,

the Owner, the Vendor, the Partners, any Investor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the CSA, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Lessor under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof imposed on or measured solely by the net income or excess profits of the Lessor, the Trust Estate, an Investor, the Owner, a Partner or the Vendor or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Lessor, the Trust Estate, an Investor, the Owner, a Partner or the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Section 6; provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Trustee or any transfer or disposition by the Trustee resulting from bankruptcy or other proceedings for the relief of debtors in which the Trustee is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Lessor or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Lessor, the Trust Estate, an Investor, the Owner, a Partner or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the



Lessee has not agreed to pay or indemnify against pursuant to this § 6.1; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in § 6.2 hereof; and provided further, that no indemnity shall be required with respect to taxes paid to any foreign country or subdivision thereof if and to the extent that (i) any person upon whom such taxes are imposed or any indemnified person is entitled to claim and utilize a credit with respect to such foreign taxes against its Federal income tax liability and (ii) the use of such credit does not in any way or in any year impair or diminish the ability of such person to claim or utilize any foreign tax credits that would otherwise be available to it; and provided further, that if in any year the Lessee pays an indemnity to any person hereunder with respect to foreign taxes paid and such person is subsequently able to claim and utilize such foreign taxes paid as a credit against its Federal income taxes (but only if such credit may be claimed and utilized in addition to all other foreign tax credits which such person would otherwise be entitled to claim) then such person shall repay to the Lessee an amount determined in the manner provided in the Indemnity Agreement of even date herewith; and provided further, that no payment shall be required hereunder with respect to any Taxes if and to the extent that any payment is made or required to be made under the Indemnity Agreement with respect to such Taxes; and provided further, that in all cases where any payment is required to be made under this Article 6, appropriate adjustments shall be made to reflect and give credit for any tax savings realized by the indemnified person as a result of the payment of any amount for which an indemnity is required or any Taxes paid as a result of the payment hereunder. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings if (i) in the opinion of the Lessor and the Vendor such contest or the nonpayment of such tax would not adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA or (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor and the Vendor.

6.2. Claims; Contests; Refunds. If claim is made against the Lessor, the Owner or the Vendor for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor, the Owner or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor, the Owner or the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor, the Owner or the Vendor in any such proceeding or action) unless (i) in the opinion of the Lessor, the Owner or the Vendor such contest or the nonpayment of the Taxes would not adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA and (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor and the Vendor. The Lessee agrees to give the Lessor, the Owner and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Lessor, the Owner or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor, the Owner or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of expenses; provided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this § 6 (except obligations resulting from the last sentence of § 6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns including exemption certificates or affidavits with respect to any sales or use tax in such manner as to show

the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor, the Owner and the Vendor or, where not so permitted, will notify the Lessor, the Vendor and the Owner of such requirement and will prepare and deliver such reports to the Lessor, the Owner and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. Survival. All the obligations of the Lessee under this § 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the CSA or the termination of this Lease. Payments due from the Lessee to the Lessor, the Owner or the Vendor under this § 6 shall be made directly to the party indemnified.

## SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or § 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a period (either stated or as perceived by the Lessee) which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof ("Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding first business day of a month occurring at least 10 days after such notice from the Lessee has been received (but not earlier than January 1, 1985) or, at the option of the Lessee, on the next succeeding January 1 or July 1 commencing with January 1, 1985 (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus, in the case of any Casualty Payment Date coinciding with January 1 or July 1, the rental, if any, in

respect of such Unit payable by the Lessee as of such date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to § 14 or § 17 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value, and any earnings or rentals accrued pursuant to § 14 or § 17 hereof, to the Lessor on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity (collectively "Government") and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the original or any renewal term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor an amount equal to the Casualty Value of such Unit as of the end of such term. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by a Government prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by a Government following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 17 hereof.

7.2. Requisition by a Government. In the event of the requisition for use by a Government of any Unit for a period which does not exceed the then remaining term of this

Lease (except where deemed a Casualty Occurrence pursuant to § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received at any time by the Lessor or the Lessee from a Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received at any time by the Lessor or the Lessee from a Government for the use of such Unit after the term of this Lease or any renewal term thereof shall be paid over or retained by the Lessor.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis and the Lessee shall notify the Lessor prior to any such disposition if the Lessee is to be the purchaser. Provided that the Lessee has previously paid the Casualty Value to the Lessor (i) the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the CSA an amount equal to any payment made by such Builder to the Lessor in respect thereof under the CSA.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with any January 1 or July 1 on or after December 31, 1984, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date is a date other than any January 1 or July 1 after December 31, 1984, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of such Unit as is set forth opposite the date which coincides with the next preceding January 1 or July 1 in Appendix C hereto ("Rental Casualty Payment Date") plus (ii) 1.317567% of the amount described in clause (i) hereof for each month or a portion of a month elapsed from and including such Rental Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring within five full calendar years after the date which Unit was placed in service within the meaning of Section 47(a)(5) of the Code, an amount equal to the percentage of the purchase price set forth below with respect to the relevant time period:

Time Period Within Which Casualty Occurrence Occurs	Percentage of Purchase Price to be added
First full year after the Unit is placed in service	18.52%
Second full year after the Unit is placed in service	14.81%
Third full year after the Unit is placed in service	11.11%
Fourth full year after the Unit is placed in service	7.41%
Fifth full year after the Unit is placed in service	3.70%

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee will, at all times prior to the return of the Units to the

Lessor at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; provided, however, that the Lessee may self-insure such Units to the extent it customarily self-insures equipment owned or leased by it similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third-party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case reasonably satisfactory to the Lessor. The proceeds of any property insurance shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor, the Owner and the Vendor as additional named insureds and loss payees as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor, the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Lessor and the Vendor a duplicate original of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option, upon 5 business days prior written notice to the Lessee, provide such insurance and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest from the date of payment thereof, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds and Condemnation Payments. If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall pay such proceeds or condemnation payments to the Lessee; provided, however, that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

## SECTION 8. REPORTS

On or before April 1 in each year, commencing with the calendar year 1985, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the CSA, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof have been preserved or replaced.



The Lessor, the Vendor and the Owner shall each have the right (but not any obligation) by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor, the Vendor or the Owner may request during the continuance of this Lease.

#### SECTION 9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendor based on any of the foregoing matters; provided, however, that

nothing herein shall in any way bar, reduce or defeat any claim that the Lessee may have against the Builder; provided further, that the Lessor hereby represents and warrants to the Lessee that upon delivery to it of any Unit the Lessor shall have received whatever title was conveyed to it by the Builder and that on the Closing Date (as defined in the CSA) the Units being settled for shall be free of any and all liens, charges, security interests or encumbrances resulting from claims against the Lessor not related to the ownership of the Units or the administration of the Trust Estate (as defined in the Trust Agreement) or any other transaction contemplated by the Trust Documents (as defined in the Trust Agreement).

#### SECTION 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units or are necessary to comply with health, safety or environmental standards as more fully described in Section 4(4) of Internal Revenue Service Rev. Proc. 75-21 as modified by Rev. Proc. 79-48, and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner if (i) in the reasonable opinion of the Lessor or the Vendor, such contest will not adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA and (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor and the Vendor.

10.2. Reports by Lessor. The Lessee will prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Vendor) any and all reports (other than income tax returns) to be

filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

## SECTION 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee will, at its own cost and expense, maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease (a) in good operating order, repair and condition, ordinary wear and tear excepted and (b) in compliance with any and all applicable laws and regulations. The Lessee will not discriminate against the Units to their detriment in the application of the maintenance procedures that the Lessee applies to all the locomotive units operated by it.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Units prior to the time such Units are returned as provided in §§ 14 and 17, except to the extent such additions, modifications or improvements are made as described in § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in § 11.2(1) hereof, or (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads (if applicable) or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or

encumbrance (except for those created by the CSA and the CSA Assignment) shall immediately be vested in the Lessor.

## SECTION 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor (in both its individual and fiduciary capacities), the Owners, the Vendor, each Investor and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever other than taxes which are provided for in Section 6 hereof, whether or not indemnified hereunder, which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise, out of this Lease, the CSA or the Units, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by any Indemnified Person, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (vi) any violation of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the party claiming indemnification (all of which matters

hereinabove set forth in this paragraph being hereinafter called "Indemnified Matters"). The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of any taxing jurisdiction, domestic or foreign, (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made to such Indemnified Party. Nothing in this § 12.1 shall constitute

a guarantee by the Lessee of the CSA Indebtedness under the CSA or a guarantee of the residual value of any Unit.

12.2. Builder Indemnification. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Builder because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by such Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to such Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

## SECTION 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3, 7 or 16 hereof, and such default shall continue for 10 days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or the Indemnity Agreement (other than a default solely in the observance or performance of a covenant contained in Section 4 of the Indemnity Agreement whether or not it is subject to an indemnity thereunder) and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor or any Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof (other than any representation for which the Lessee is the subject of an indemnity under the Indemnity Agreement whether or not indemnified thereunder);

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law

which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period



by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify: (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorneys fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset and/or recoupment against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim, which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee also agrees to furnish the Lessor, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this § 13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### SECTION 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or pursuant to Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when

originally delivered to the Lessee, ordinary wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee. For the purpose of delivering possession of any Unit of Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall

belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

#### SECTION 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor to any successor Lessor which may be appointed pursuant to Article VII of the Trust Agreement or to any banking or financial institution which has a combined capital and surplus of at least \$50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee thereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this § 15.2. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or any

encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates or to any railroad company incorporated in the United States of America or any state thereof or the District of Columbia, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that any such sublease to any nonaffiliated railroad company shall not exceed a period equal to 180 days for any 12-month period, and provided further, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) and 168(f)(2) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph shall be subject and subordinate to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect to the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 shall be

deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, the Consent, the Participation Agreement and the Indemnity Agreement by an appropriate instrument in writing.

#### SECTION 16. RENEWAL OPTIONS AND LIMITED RIGHT TO PURCHASE

16.1. Renewal for Successive Periods. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or the first extended term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of such number of the Units as the Lessee chooses for an additional two-year period commencing on the scheduled expiration of such original term or then extended term, as the case may be, of this Lease; provided, however, that if the Lessee elects to extend the original or first extended term of this Lease as to less than all the Units, the Lessor shall select which of the Units are to be included in the extended term. The rental payable during each extended term shall be payable semiannually in arrears on January 1 and July 1 of each year of such extended term and shall be in an amount equal to the "Fair Market Rental".

16.2. Determination of Fair Market Rental. (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.

(2) If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease for any extended term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be shared equally by the Lessor and Lessee.

16.3. Duty to First Offer. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, if the Lessor decides to sell the Units at the end of the original or any extended term of this Lease, then the Lessor shall, (at any time not more

than 180 days prior to the expiration of the original or any extended term of this Lease) prior to offering the Units to any third party, offer to the Lessee the right to buy such number of the Units as the Lessee chooses at the then Fair Market Value thereof payable in cash on the later of the last day of such term or the date of the determination of the Fair Market Value; provided, that if the Lessee elects to purchase less than all of the Units, the Lessor shall select which of the Units are to be included in the Units to be purchased by the Lessee; and provided further, that the Lessee shall have no right to purchase any Units remaining after it has purchased less than all the Units. The Lessee shall notify the Lessor in writing of its acceptance or rejection of such offer not later than 20 days after receipt of notification of such offer. If the Lessor shall not have received written notice of such acceptance within such 20-day period, the Lessor shall no longer be obligated to offer such Units to the Lessee. Any notice of acceptance given by the Lessee shall be irrevocable. Fair Market Value shall be determined on the basis of criteria and procedures comparable to those established for the determination of Fair Market Rental under § 16.2 hereof, but the expenses of the appraisal proceedings shall be borne by the Lessor. Notwithstanding anything to the contrary hereinabove contained in this § 16.3, the Lessor's duty of first offer at the end of the original or any extended term of this Lease shall terminate upon the Lessor's leasing the Equipment to a third party at the expiration of such original or extended term of this Lease. Should the Lessee elect to Purchase the Units at the Fair Market Value pursuant to this Section 16.3, the Lessor shall upon request of the Lessee execute and deliver to the Lessee a bill of sale (without warranties except those as to absence of liens described below) for the Units as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and encumbrances arising through the Lessor.

#### SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 30 days thereafter, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor



to store such Unit on such tracks for a period not exceeding 180 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense of the Lessee and risk of the Lessor. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads (if applicable) and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. In the event any Unit is not assembled, delivered and stored as hereinabove provided as a result of any action or inaction on the part of the Lessee, within 30 days after such termination, the Lessee shall pay to the Lessor, for each day thereafter as liquidated damages, and not as a penalty, for the failure of the Lessee to return the Unit to the Lessor at the termination of this Lease as required by the provisions of this § 17, an amount equal to the daily equivalent of the rental factor of such Unit as in effect at the time of such termination, for each such day. The provision for such payment shall not be in abrogation of the Lessor's right under this § 17 to have each Unit returned to

it within 30 days after the termination of the original or extended term of this Lease with respect to such Unit.

#### SECTION 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the CSA. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the CSA Assignment in Canada. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada prior to the delivery and acceptance hereunder of any Unit.

#### SECTION 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to the Debt Rate (as defined in paragraph 4.4 of the CSA) plus 1% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

## SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may (but shall not be obligated to do so) upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Citibank, N.A., New York, N. Y., publicly announces as its prime rate shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

## SECTION 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to each Owner at its address set forth in Appendix II to the Participation Agreement; and

(b) if to the Lessee, at Room 800, Soo Line Building, Box 530, Minneapolis, Minnesota 55440, Attention of Harold J. Ness, Vice President.

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing.

## SECTION 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### SECTION 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

#### SECTION 24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owners, the Vendor and the permitted successors and assigns of a party, and, as to Section 12.2 hereof, the Builder) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### SECTION 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

#### SECTION 26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State

of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and Section 86 of the Railway Act of Canada.

#### SECTION 27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Lessor are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution or the Owners on account of any representation, warranty or agreement hereunder of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

SECTION 28. AGREEMENTS FOR BENEFIT OF OWNERS  
AND OWNERS' AND LESSOR'S ASSIGNS

All rights of the Lessor hereunder shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement and the Lessor's assigns including the Vendor.

The Lessee agrees for the benefit of the Owner that the Lessee's obligations under the Indemnity Agreement shall be considered rights and obligations under this Lease and inseparable therefrom.

SECTION 29. TERM LESSOR OR LESSEE

Whenever the term "Lessor" is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor (including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

SOO LINE RAILROAD COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Trustee as aforesaid,

by

---

Authorized Officer

[Seal]

Attest:

---

Authorized Officer

STATE OF MINNESOTA, )  
 ) ss.:  
COUNTY OF HENNEPIN, )

On this       day of July 1984, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of SOO LINE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this       day of July 1984, before me personally appeared       to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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Notary Public

[Notarial Seal]

My Commission expires



# APPENDIX A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,000 h.p. Model SD40-2 diesel- electric locomotive	EMD	8087-3	La Grange, Illinois	6	S00 6618- 6623	\$935,270	\$5,611,620	August 3, 1984, at McCook, Illinois

APPENDIX B TO LEASE

Basic Lease Rates

<u>Date</u>	<u>Percentage of Purchase Price*</u>
July 1, 1985	4.520197%
January 1, 1986	6.245444%
July 1, 1986	4.395117%
January 1, 1987	6.370524%
July 1, 1987	4.251899%
January 1, 1988	6.513741%
July 1, 1988	4.087916%
January 1, 1989	6.677725%
July 1, 1989	3.900155%
January 1, 1990	6.865486%
July 1, 1990	4.539836%
January 1, 1991	6.225805%
July 1, 1991	6.551991%
January 1, 1992	4.213650%
July 1, 1992	7.631677%
January 1, 1993	4.330145%
July 1, 1993	8.749457%
January 1, 1994	4.408548%
July 1, 1994	8.924076%
January 1, 1995	4.233930%
July 1, 1995	9.113649%
January 1, 1996	4.044357%
July 1, 1996	9.318522%
January 1, 1997	3.839483%
July 1, 1997	9.539927%
January 1, 1998	3.618078%
July 1, 1998	12.286097%
January 1, 1999	.871908%
July 1, 1999	13.071412%
January 1, 2000	.000866

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\* As defined in paragraph 4.1 of the CSA.

# APPENDIX C TO LEASE

## Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price*</u>
January 1, 1985	96.55947
July 1, 1985	102.78562
January 1, 1986	101.98847
July 1, 1986	104.74697
January 1, 1987	102.90564
July 1, 1987	105.32926
January 1, 1988	102.35141
July 1, 1988	104.37214
January 1, 1989	100.21617
July 1, 1989	101.83453
January 1, 1990	97.52983
July 1, 1990	98.21598
January 1, 1991	94.41233
July 1, 1991	92.89728
January 1, 1992	90.89400
July 1, 1992	88.08710
January 1, 1993	85.85567
July 1, 1993	81.63111
January 1, 1994	79.17200
July 1, 1994	74.37901
January 1, 1995	71.93064
July 1, 1995	66.52327
January 1, 1996	64.08855
July 1, 1996	58.01701
January 1, 1997	55.59699
July 1, 1997	48.80749
January 1, 1998	46.40327
July 1, 1998	36.33078
January 1, 1999	36.18573
July 1, 1999	24.66968
January 1, 2000	20.00000

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\* As defined in paragraph 4.1 of the CSA.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 1, 1984 ("Assignment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, acting not in its individual capacity but solely in its capacity as Trustee ("Lessor") under a Trust Agreement ("Trust Agreement") dated as of the date hereof with DYER ASSOCIATES, a Rhode Island limited partnership ("Owner") in which CONNELL FINANCE COMPANY, INC. and TEXTRON FINANCIAL CORPORATION are, respectively, the Limited Partner and the General Partner (the "Partners" or, individually, a "Partner"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent ("Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with General Motors Corporation (Electro-Motive Division) ("Builder"), providing for the sale to the Lessor of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and Soo Line Railroad Company ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Lessor to the Lessee of the Units;

WHEREAS in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in paragraph 4.3(b) of the CSA), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under the Lease (including

those insuring to the benefit of the Owner other than those contained in § 20 of the Lease and other than those contained in the Indemnity Agreement referred to therein), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys, other than the Excluded Indemnity defined below, being hereinafter called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided, however, that, notwithstanding the foregoing, the Lessor shall be entitled to receive directly from the Lessee any indemnification provided for the Lessor under §§ 6, 7 and 12 of the Lease, which indemnification is excluded from this Assignment ("Excluded Indemnity"). In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner on the same date such Payment is applied to satisfy such obligations of the Lessor by bank wire to the Owner at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner. If the Vendor shall not receive any rental payment under § 3 of the Lease or Casualty Value payment under § 7.1 of the Lease when due, the Vendor shall notify the Lessor and each Owner by telegraph, confirmed by registered mail, return receipt requested, at its address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor and the Owner shall not affect the obligations of the Lessor hereunder or under the CSA, except that the Vendor may not make a Declaration of Default (as defined in

paragraph 16.1 of the CSA) based solely on an event of default under subparagraph (a) of said paragraph 16.1 arising solely by reason of the failure of the Lessee to make any such rental or Casualty Value payment which, pursuant to subparagraph (e) of said paragraph 16.1, would not constitute an event of default thereunder if the Lessor complies with the provisions thereof, unless such event of default is not remedied within five days after notification is given as aforesaid.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claim or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums and other obligations due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums and other obligations due from the Lessor under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and Section 86 of the Railway Act of Canada.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Lessor may, whether or not an event of default under the CSA has occurred and is then

continuing, exercise or enforce, or seek to exercise and enforce, its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease in respect of the Excluded Indemnity; provided further, however, that the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease or take any action which would cause any termination of the Lease.

11. Anything herein to the contrary notwithstanding, each and all of the representations and agreements in this Assignment made on the part of the financial institution acting as Lessor are each and every one of them made and intended not as personal representations and agreements by said financial institution in its individual capacity, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution, on account of any representation or agreement hereunder of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.



This Assignment shall be effective upon delivery of fully executed counterparts hereof to Messrs. Cravath, Swaine & Moore, at their offices in New York, New York.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer



### Consent and Agreement

The undersigned, the lessee ("Lessee") named in the Lease ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as the Lease Assignment is effective:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities (except the Excluded Indemnity defined in Section 1 of the Lease Assignment) and other moneys provided for in the Lease due and to become due under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent ("Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds to Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, for credit to its Corporate Trust Account No. 619478-8 with advice that the funds are "RE: SOO 7/1/84": (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor and that the Lessee will not assert against the Vendor any claim or defense the Lessee may have against the Lessor under the Lease;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment of this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Minnesota and, for all purposes, shall be construed in accordance with the laws of said state.

SOO LINE RAILROAD COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of July 1984.

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Vice President